2022

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2022

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2022 REGULAR SESSION

PUBLISHED BY AUTHORITY OF
THE LEGISLATURE

SUPPLEMENTING

Volume 15

Titles 69 to 71

(As Revised 2021)

For latest statutes or assistance call 1-800-833-9844

By the Editorial Staff of the Publisher

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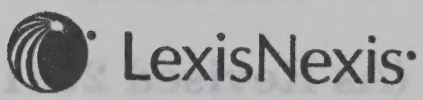

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

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PUBLISHER'S FOREWORD

Statutes

The 2022 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2022 Regular Legislative Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 4th Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2022 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2022 LexisNexis

SCHEDULE OF NEW SECTIONS

Added in this Supplement

TITLE 71. LABOR AND INDUSTRY

CHAPTER 5. Unemployment Compensation

Article 11. Benefits

Sec.

71-5-547. Prevention and detection of fraud regarding payment of unemployment insurance benefits and collection of tax contributions; recovery of fraudulently obtained benefits and improperly withheld unemployment insurance tax contributions.

CHAPTER 5. Unemployment Compensation

71-17-1. Short title.

71-17-3. Definitions.

71-17-5. Unequal pay to member of the opposite sex for equal work requiring equal skill, education, effort and responsibility performed under similar working conditions prohibited; exceptions; enforcement by civil suit; remedies; retaliation against employee prohibited.

71-17-7. Timing of civil action; relief may be sought under this chapter or Equal Pay Act of 1963 but not both; mandatory authority of published precedents; severability.

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TITLE 69.
AGRICULTURE, HORTICULTURE, AND ANIMALS

Chapter 2. Mississippi Farm Reform Act. 69-2-1

CHAPTER 2.
MISSISSIPPI FARM REFORM ACT

General Provisions. 69-2-1

GENERAL PROVISIONS

Sec.
69-2-11. Emerging crop designations.
69-2-13. Emerging Crops Fund; loans for agribusinesses and small business concerns; loans for planning and development districts; program to assist minority business enterprises; loans for regional crafts projects; financing agribusiness programs; funds for rehabilitation, maintenance and advertising of Mississippi Farmers Central Market; program of loan guaranties on behalf of qualified nonprofit entities designated as community development financial institutions to encourage financing for loans in low-income communities; grants to certain agribusiness enterprises processing, drying, storing or shipping peanuts; program of loan guaranties on behalf of certain sweet potato growing and farming agribusinesses.

§ 69-2-11. Emerging crop designations.

Emerging crop designations shall include, but not be limited to:

(a) Blueberries;

(b) Muscadines;

(c) Christmas trees;

(d) Aquaculture, including any species from the Gulf of Mexico and its tributaries;

(e) Horticulture;

(f) Rabbit farming and processing; and

(g) Others designated by the Mississippi Development Authority or Legislature.

Emerging crop designations shall not include medical cannabis establishments as defined in the Mississippi Medical Cannabis Act.

HISTORY: Laws, 1987, ch. 482, § 6; Laws, 1996, ch. 415, § 2; Laws, 1998, ch. 536, § 8, eff from and after passage (approved April 9, 1998); Laws, 2022, ch. 303, § 98, eff from and after passage (approved February 2, 2022).

Amendment Notes — The 2022 amendment, effective February 2, 2022, in (g), substituted "Mississippi Development Authority" for "Board of Economic Development"; and added the last paragraph.

Cross References — Mississippi Medical Cannabis Act, see § 41-137-1 et seq.

§ 69-2-13. Emerging Crops Fund; loans for agribusinesses and small business concerns; loans for planning and development districts; program to assist minority business enterprises; loans for regional crafts projects; financing agribusiness programs; funds for rehabilitation, maintenance and advertising of Mississippi Farmers Central Market; program of loan guaranties on behalf of qualified nonprofit entities designated as community development financial institutions to encourage financing for loans in low-income communities; grants to certain agribusiness enterprises processing, drying, storing or shipping peanuts; program of loan guaranties on behalf of certain sweet potato growing and farming agribusinesses.

(1) There is hereby established in the State Treasury a fund to be known as the "Emerging Crops Fund," which shall be used to pay the interest on loans made to farmers for nonland capital costs of establishing production of emerging crops on land in Mississippi, and to make loans and grants which are authorized under this section to be made from the fund. The fund shall be administered by the Mississippi Development Authority. A board comprised of the directors of the authority, the Mississippi Cooperative Extension Service, the Mississippi Small Farm Development Center and the Mississippi Agricultural and Forestry Experiment Station, or their designees, shall develop definitions, guidelines and procedures for the implementation of this chapter. Funds for the Emerging Crops Fund shall be provided from the issuance of bonds or notes under Sections 69-2-19 through 69-2-37 and from repayment of interest loans made from the fund.

(2)(a) The Mississippi Development Authority shall develop a program which gives fair consideration to making loans for the processing and manufacturing of goods and services by agribusiness, greenhouse production horticulture, and small business concerns. It is the policy of the State of Mississippi that the Mississippi Development Authority shall give due recognition to and shall aid, counsel, assist and protect, insofar as is possible, the interests of agribusiness, greenhouse production horticulture,

and small business concerns. To ensure that the purposes of this subsection are carried out, the Mississippi Development Authority shall loan not more than One Million Dollars ($1,000,000.00) to finance any single agribusiness, greenhouse production horticulture, or small business concern. Loans made pursuant to this subsection shall be made in accordance with the criteria established in Section 57-71-11.

(b) The Mississippi Development Authority may, out of the total amount of bonds authorized to be issued under this chapter, make available funds to any planning and development district in accordance with the criteria established in Section 57-71-11. Planning and development districts which receive monies pursuant to this provision shall use such monies to make loans to private companies for purposes consistent with this subsection.

(c) The Mississippi Development Authority is hereby authorized to engage legal services, financial advisors, appraisers and consultants if needed to review and close loans made hereunder and to establish and assess reasonable fees, including, but not limited to, liquidation expenses.

(d) The State Auditor may conduct performance and compliance audits under this chapter according to Section 7-7-211(o) and may bill the oversight agency.

(3)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for the following programs of loans to be made to agribusiness or greenhouse production horticulture enterprises for the purpose of encouraging thereby the extension of conventional financing and the issuance of letters of credit to such agribusiness or greenhouse production horticulture enterprises by private institutions. Monies to make such loans by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund.

(b) The Mississippi Development Authority may make loans to agribusiness or greenhouse production horticulture enterprises. The amount of any loan to any single enterprise under this paragraph (b) shall not exceed twenty percent (20%) of the total cost of the project for which financing is sought or Two Hundred Fifty Thousand Dollars ($250,000.00), whichever is less. No interest shall be charged on such loans, and only the amount actually loaned shall be required to be repaid. Repayments shall be deposited into the Emerging Crops Fund.

(c) The Mississippi Development Authority also may make loans under this subsection (3) to existing agribusiness or greenhouse production horticulture enterprises for the purpose of assisting such enterprises to make upgrades, renovations, repairs and other improvements to their equipment, facilities and operations, which shall not exceed Two Hundred Fifty Thousand Dollars ($250,000.00) or thirty percent (30%) of the total cost of the project for which financing is sought, whichever is less. No interest shall be charged on loans made under this paragraph, and only the amount actually loaned shall be required to be repaid. Repayments shall be deposited into the Emerging Crops Fund.

(d) The maximum aggregate amount of loans that may be made under

this subsection (3) to any one (1) agribusiness shall be not more than Five Hundred Thousand Dollars ($500,000.00).

(4)(a) Through June 30, 2010, the Mississippi Development Authority may loan or grant to qualified planning and development districts, and to small business investment corporations, bank-based community development corporations, the Recruitment and Training Program, Inc., the City of Jackson Business Development Loan Fund, the Lorman Southwest Mississippi Development Corporation, the West Jackson Community Development Corporation, the East Mississippi Development Corporation, and other entities meeting the criteria established by the Mississippi Development Authority (all referred to hereinafter as "qualified entities"), funds for the purpose of establishing loan revolving funds to assist in providing financing for minority economic development. The monies loaned or granted by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Twenty-nine Million Dollars ($29,000,000.00) in the aggregate. Planning and development districts or qualified entities which receive monies pursuant to this provision shall use such monies to make loans to minority business enterprises consistent with criteria established by the Mississippi Development Authority. Such criteria shall include, at a minimum, the following:

(i) The business enterprise must be a private, for-profit enterprise.

(ii) If the business enterprise is a proprietorship, the borrower must be a resident citizen of the State of Mississippi; if the business enterprise is a corporation or partnership, at least fifty percent (50%) of the owners must be resident citizens of the State of Mississippi.

(iii) The borrower must have at least five percent (5%) equity interest in the business enterprise.

(iv) The borrower must demonstrate ability to repay the loan.

(v) The borrower must not be in default of any previous loan from the state or federal government.

(vi) Loan proceeds may be used for financing all project costs associated with development or expansion of a new small business, including fixed assets, working capital, start-up costs, rental payments, interest expense during construction and professional fees related to the project.

(vii) Loan proceeds shall not be used to pay off existing debt for loan consolidation purposes; to finance the acquisition, construction, improvement or operation of real property which is to be held primarily for sale or investment; to provide for, or free funds, for speculation in any kind of property; or as a loan to owners, partners or stockholders of the applicant which do not change ownership interest by the applicant. However, this does not apply to ordinary compensation for services rendered in the course of business.

(viii) The maximum amount that may be loaned to any one (1) borrower shall be Two Hundred Fifty Thousand Dollars ($250,000.00).

(ix) The Mississippi Development Authority shall review each loan before it is made, and no loan shall be made to any borrower until the loan

has been reviewed and approved by the Mississippi Development Authority.

(b) For the purpose of this subsection, the term "minority business enterprise" means a socially and economically disadvantaged small business concern, organized for profit, performing a commercially useful function which is owned and controlled by one or more minorities or minority business enterprises certified by the Mississippi Development Authority, at least fifty percent (50%) of whom are resident citizens of the State of Mississippi. Except as otherwise provided, for purposes of this subsection, the term "socially and economically disadvantaged small business concern" shall have the meaning ascribed to such term under the Small Business Act (15 USCS, Section 637(a)), or women, and the term "owned and controlled" means a business in which one or more minorities or minority business enterprises certified by the Mississippi Development Authority own sixty percent (60%) or, in the case of a corporation, sixty percent (60%) of the voting stock, and control sixty percent (60%) of the management and daily business operations of the business. However, an individual whose personal net worth exceeds Five Hundred Thousand Dollars ($500,000.00) shall not be considered to be an economically disadvantaged individual.

From and after July 1, 2010, monies not loaned or granted by the Mississippi Development Authority to planning and development districts or qualified entities under this subsection, and monies not loaned by planning and development districts or qualified entities, shall be deposited to the credit of the sinking fund created and maintained in the State Treasury for the retirement of bonds issued under Section 69-2-19.

(c) Notwithstanding any other provision of this subsection to the contrary, if federal funds are not available for commitments made by a planning and development district to provide assistance under any federal loan program administered by the planning and development district in coordination with the Appalachian Regional Commission or Economic Development Administration, or both, a planning and development district may use funds in its loan revolving fund, which have not been committed otherwise to provide assistance, for the purpose of providing temporary funding for such commitments. If a planning and development district uses uncommitted funds in its loan revolving fund to provide such temporary funding, the district shall use funds repaid to the district under the temporarily funded federal loan program to replenish the funds used to provide the temporary funding. Funds used by a planning and development district to provide temporary funding under this paragraph (c) must be repaid to the district's loan revolving fund no later than twelve (12) months after the date the district provides the temporary funding. A planning and development district may not use uncommitted funds in its loan revolving fund to provide temporary funding under this paragraph (c) on more than two (2) occasions during a calendar year. A planning and development district may provide temporary funding for multiple commitments on each such occasion. The maximum aggregate amount of uncommitted funds in a

loan revolving fund that may be used for such purposes during a calendar year shall not exceed seventy percent (70%) of the uncommitted funds in the loan revolving fund on the date the district first provides temporary funding during the calendar year.

(d) If the Mississippi Development Authority determines that a planning and development district or qualified entity has provided loans to minority businesses in a manner inconsistent with the provisions of this subsection, then the amount of such loans so provided shall be withheld by the Mississippi Development Authority from any additional grant funds to which the planning and development district or qualified entity becomes entitled under this subsection. If the Mississippi Development Authority determines, after notifying such planning and development district or qualified entity twice in writing and providing such planning and development district or qualified entity a reasonable opportunity to comply, that a planning and development district or qualified entity has consistently failed to comply with this subsection, the Mississippi Development Authority may declare such planning and development district or qualified entity in default under this subsection and, upon receipt of notice thereof from the Mississippi Development Authority, such planning and development district or qualified entity shall immediately cease providing loans under this subsection, shall refund to the Mississippi Development Authority for distribution to other planning and development districts or qualified entities all funds held in its revolving loan fund and, if required by the Mississippi Development Authority, shall convey to the Mississippi Development Authority all administrative and management control of loans provided by it under this subsection.

(e) If the Mississippi Development Authority determines, after notifying a planning and development district or qualified entity twice in writing and providing copies of such notification to each member of the Legislature in whose district or in a part of whose district such planning and development district or qualified entity is located and providing such planning and development district or qualified entity a reasonable opportunity to take corrective action, that a planning and development district or qualified entity administering a revolving loan fund under the provisions of this subsection is not actively engaged in lending as defined by the rules and regulations of the Mississippi Development Authority, the Mississippi Development Authority may declare such planning and development district or qualified entity in default under this subsection and, upon receipt of notice thereof from the Mississippi Development Authority, such planning and development district or qualified entity shall immediately cease providing loans under this subsection, shall refund to the Mississippi Development Authority for distribution to other planning and development districts or qualified entities all funds held in its revolving loan fund and, if required by the Mississippi Development Authority, shall convey to the Mississippi Development Authority all administrative and management control of loans provided by it under this subsection.

(5) The Mississippi Development Authority shall develop a program which will assist minority business enterprises by guaranteeing bid, perfor-

mance and payment bonds which such minority businesses are required to obtain in order to contract with federal agencies, state agencies or political subdivisions of the state. The Mississippi Development Authority may secure letters of credit, as determined necessary by the authority, to guarantee bid, performance and payment bonds pursuant to this subsection. Monies for such program shall be drawn from the monies allocated under subsection (4) of this section to assist the financing of minority economic development and shall not exceed Three Million Dollars ($3,000,000.00) in the aggregate. The Mississippi Development Authority may promulgate rules and regulations for the operation of the program established pursuant to this subsection. For the purpose of this subsection (5), the term "minority business enterprise" has the meaning assigned such term in subsection (4) of this section.

(6) The Mississippi Development Authority may loan or grant to public entities and to nonprofit corporations funds to defray the expense of financing (or to match any funds available from other public or private sources for the expense of financing) projects in this state which are devoted to the study, teaching and/or promotion of regional crafts and which are deemed by the authority to be significant tourist attractions. The monies loaned or granted shall be drawn from the Emerging Crops Fund and shall not exceed Two Hundred Fifty Thousand Dollars ($250,000.00) in the aggregate.

(7) Through June 30, 2006, the Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce funds for the purpose of establishing loan revolving funds and other methods of financing for agribusiness programs administered under the Mississippi Agribusiness Council Act of 1993. The monies made available by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed One Million Two Hundred Thousand Dollars ($1,200,000.00) in the aggregate. The Mississippi Department of Agriculture and Commerce shall establish control and auditing procedures for use of these funds. These funds will be used primarily for quick payment to farmers for vegetable and fruit crops processed and sold through vegetable processing plants associated with the Department of Agriculture and Commerce and the Mississippi State Extension Service.

(8) From and after July 1, 1996, the Mississippi Development Authority shall make available to the Mississippi Small Farm Development Center One Million Dollars ($1,000,000.00) to be used by the center to assist small entrepreneurs as provided in Section 37-101-25, Mississippi Code of 1972. The monies made available by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund.

(9) [Repealed]

(10) The Mississippi Development Authority shall make available to the Small Farm Development Center at Alcorn State University funds in an aggregate amount not to exceed Three Hundred Thousand Dollars ($300,000.00), to be drawn from the cash balance of the Emerging Crops Fund. The Small Farm Development Center at Alcorn State University shall use such funds to make loans to producers of sweet potatoes and cooperatives anywhere

in the State of Mississippi owned by sweet potato producers to assist in the planting of sweet potatoes and the purchase of sweet potato production and harvesting equipment. A report of the loans made under this subsection shall be furnished by January 15 of each year to the Chairman of the Senate Agriculture Committee and the Chairman of the House Agriculture Committee.

(11) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce "Make Mine Mississippi" program an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) to be drawn from the cash balance of the Emerging Crops Fund.

(12) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce an amount not to exceed One Hundred Fifty Thousand Dollars ($150,000.00) to be drawn from the cash balance of the Emerging Crops Fund to be used for the rehabilitation and maintenance of the Mississippi Farmers Central Market in Jackson, Mississippi.

(13) The Mississippi Development Authority shall make available to the Mississippi Department of Agriculture and Commerce an amount not to exceed Twenty-five Thousand Dollars ($25,000.00) to be drawn from the cash balance of the Emerging Crops Fund to be used for advertising purposes related to the Mississippi Farmers Central Market in Jackson, Mississippi.

(14)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of loan guaranties to be made on behalf of any nonprofit entity qualified under Section 501(c)(3) of the Internal Revenue Code and certified by the United States Department of the Treasury as a community development financial institution for the purpose of encouraging the extension of financing to such an entity which financing the entity will use to make funds available to other entities for the purpose of making loans available in low-income communities in Mississippi. Monies to make such loan guaranties by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Two Million Dollars ($2,000,000.00) in the aggregate. The amount of a loan guaranty on behalf of such an entity under this subsection (14) shall not exceed Two Million Dollars ($2,000,000.00). Assistance received by an entity under this subsection (14) shall not disqualify the entity from obtaining any other assistance under this chapter.

(b) An entity desiring assistance under this subsection (14) must submit an application to the Mississippi Development Authority. The application must include any information required by the Mississippi Development Authority.

(c) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (14), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (14).

(15)(a) The Mississippi Development Authority shall, in addition to the other programs described in this section, provide for a program of grants to agribusiness enterprises that process, dry, store or ship peanuts and if the enterprise has invested prior to April 17, 2009, a minimum of Six Million Dollars ($6,000,000.00) in land, facilities and equipment in this state that are utilized to process, dry, store or ship peanuts. Monies to make such grants by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed One Million Dollars ($1,000,000.00) in the aggregate. The amount of a grant under this subsection (15) shall not exceed One Million Dollars ($1,000,000.00).

(b) An entity desiring assistance under this subsection (15) must submit an application to the Mississippi Development Authority. The application must include a description of the project for which assistance is requested, the cost of the project for which assistance is requested, the amount of assistance requested and any other information required by the Mississippi Development Authority.

(c) As a condition of the receipt of a grant under this subsection (15), an entity must agree to remain in business in this state for not less than five (5) years and must meet other conditions established by the Mississippi Development Authority to ensure that the assistance results in an economic benefit to the state. The Mississippi Development Authority shall require that binding commitments be entered into requiring that:

(i) The minimum requirements provided for in this subsection (15) and the conditions established by the Mississippi Development Authority are met; and

(ii) If such commitments and conditions are not met, all or a portion of the funds provided pursuant to this subsection (15) shall be repaid.

(d) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (15), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (15).

(16)(a) The Mississippi Development Authority, in addition to the other programs described in this section, shall provide for a program of loan guaranties to be made on behalf of certain agribusinesses engaged in sweet potato growing and farming for the purpose of encouraging thereby the extension of conventional financing and the issuance of letters of credit to such agribusinesses by lenders. The amount of a loan guaranty made on behalf of such an agribusiness shall be ninety percent (90%) of the amount of assistance made available by a lender for the purposes authorized under this subsection (16). Monies to make such loan guaranties by the Mississippi Development Authority shall be drawn from the Emerging Crops Fund and shall not exceed Seventeen Million Dollars ($17,000,000.00) in the aggregate.

(b) In order to be eligible for assistance under this subsection (16) an agribusiness must:

(i) Have been actively engaged in sweet potato growing and farming in this state before January 1, 2010;

(ii) Have incurred a disaster-related loss for sweet potato growing and farming purposes for calendar year 2009, as determined by a lender;

(iii) Agree to obtain and maintain federal Noninsured Agricultural Program (NAP) insurance coverage for the outstanding balance of any assistance received under this subsection (16); and

(iv) Satisfy underwriting criteria established by a lender related to loans under this subsection (16).

(c)(i) An entity desiring assistance under this subsection must submit an application for assistance to a lender not later than August 1, 2010. The application must include:

1. Information verifying the length of time the applicant has been actively engaged in sweet potato growing and farming in this state;

2. Information regarding the number of acres used by the applicant for sweet potato growing and farming purposes during the 2009 calendar year, as certified to by the Farm Services Authority (FSA) or the Mississippi Department of Agriculture and Commerce (MDAC), and the number of acres the applicant intends to use for such purposes during the 2010 calendar year;

3. The average cost per acre incurred by the applicant for sweet potato growing and farming purposes during the 2009 calendar year, as certified to by the FSA or MDAC, and an estimate of the average cost per acre to be incurred by the applicant for such purposes during the calendar year for which application is made;

4. The amount of assistance requested;

5. A statement from the applicant agreeing that he will obtain and maintain NAP insurance coverage for the outstanding balance of any assistance received under this subsection (16); and

6. Any other information required by the lender and/or the MDA.

(ii) The lender shall review the application for assistance and determine whether the applicant qualifies for assistance under this subsection (16). If the lender determines that the applicant qualifies for assistance, the lender shall loan funds to the applicant subject to the provisions of this subsection (16).

(d) Loans made under this subsection (16) shall be subject to the following conditions:

(i) The maximum amount of a loan to a borrower shall not exceed One Thousand Seven Hundred Dollars ($1,700.00) per acre and shall exclude any machinery and equipment costs.

(ii) The proceeds of a loan may be used only for paying a borrower's sweet potato planting, production and harvesting costs, excluding machinery and equipment costs.

(iii) The proceeds of a loan may not be used to repay, satisfy or finance existing debt.

(iv) The time allowed for repayment of a loan shall not be more than

five (5) years, and there shall be no penalty, fee or other charge imposed for the prepayment of a loan.

(e) The receipt of assistance by a person or other entity under any other program described in this section shall not disqualify the person or entity from obtaining a loan under the program established in this subsection (16) if the person or entity is otherwise eligible under this program. In addition, the receipt of a loan by a person or other entity under the program established under this subsection (16) shall not disqualify the person or entity from obtaining assistance under any other program described in this section.

(f) The Mississippi Development Authority shall have all powers necessary to implement and administer the program established under this subsection (16), and the Mississippi Development Authority shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this subsection (16).

(17) Notwithstanding any other provision of this section to the contrary, the Mississippi Development Authority shall not provide loans, loan guaranties, grants or any other form of assistance to medical cannabis establishments as defined in the Mississippi Medical Cannabis Act.

HISTORY: Laws, 1987, ch. 482, § 7; Laws, 1988, ch. 580, § 19; Laws, 1989, ch. 524, § 29; Laws, 1990, ch. 570, § 18; Laws, 1991, ch. 584, § 6,; Laws, 1992, ch. 548, § 11; Laws, 1993, ch. 548, § 8; Laws, 1993, ch. 619, § 9; Laws, 1994, ch. 560, § 4; Laws, 1995, ch. 548, § 10; Laws, 1996, ch. 553, § 5; Laws, 1997, ch. 582, § 1; Laws, 1998, ch. 536, § 9; Laws, 2000, ch. 584, § 4; Laws, 2000, ch. 620, § 1; Laws, 2001, ch. 540, § 1; Laws, 2002, ch. 536, § 1; Laws, 2003, ch. 504, § 1; Laws, 2004, ch. 360, § 1; Laws, 2004, 3rd Ex Sess, ch. 1, § 95; Laws, 2006, ch. 564, § 1; Laws, 2007, ch. 586, § 1; Laws, 2008, ch. 506, § 6; Laws, 2009, ch. 557, § 31; Laws, 2010, ch. 429, § 1; Laws, 2010, ch. 511, § 27; Laws, 2011, ch. 420, § 1; Laws, 2012, ch. 415, § 1; Laws, 2013, ch. 386, § 1; Laws, 2014, ch. 427, § 9, eff from and after July 1, 2014; Laws, 2020, ch. 337, § 1, eff from and after July 1, 2020; Laws, 2022, ch. 303, § 99, eff from and after passage (approved February 2, 2022).

Amendment Notes — The 2022 amendment, effective February 2, 2022, added (17).

Cross References — Mississippi Medical Cannabis Act, see §§ 41-137-1 et seq.

TITLE 71.

LABOR AND INDUSTRY

Chapter 3.	Workers' Compensation.	71-3-1
Chapter 5.	Unemployment Compensation.	71-5-1
Chapter 15.	Mississippi Employment Fairness Act.	71-15-1
Chapter 17.	Mississippi Equal Pay for Equal Work Act.	71-17-1

CHAPTER 3.

WORKERS' COMPENSATION

General Provisions. 71-3-1

GENERAL PROVISIONS

Sec.

71-3-7. Liability for payment of compensation.

71-3-121. Drug and alcohol testing; employer's right to demand or administer; presumptions; admissibility of results.

§ 71-3-3. Definitions.

JUDICIAL DECISIONS

17. Disability.

Mississippi Workers' Compensation Commission did not err in denying permanent partial disability benefits to an employee because the employee failed to present persuasive medical evidence that his work injury resulted in a permanent disability that caused him to suffer a loss of wage-earning capacity; the administrative judge did not find the employee's subjective complaints of pain to be credible, and the employee failed to show that his post-injury wages were unreliable, as, among other things, upon returning to work, he continued to earn the same wages post-injury. Duren v. Effex Mgmt. Sols., LLC, — So. 3d —, 2022 Miss. App. LEXIS 195 (Miss. Ct. App. June 7, 2022).

Workers' Compensation Commission did not err in denying the worker permanent disability benefits because the Commission properly applied the rebuttable presumption that the worker suffered no loss of wage-earning capacity, as her post-injury wages were higher than her pre-injury wages, and substantial evidence supported the Commission's finding that the worker failed to rebut that presumption. McKenzie v. Howard Indus., 323 So. 3d 520, 2020 Miss. App. LEXIS 35 (Miss. Ct. App.), cert. denied, 302 So. 3d 643, 2020 Miss. LEXIS 384 (Miss. 2020).

§ 71-3-7. Liability for payment of compensation.

(1) Compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease. An occupational disease shall be deemed to arise out of and in

the course of employment when there is evidence that there is a direct causal connection between the work performed and the occupational disease. In all claims in which no benefits, including disability, death and medical benefits, have been paid, the claimant shall file medical records in support of his claim for benefits when filing a petition to controvert. If the claimant is unable to file the medical records in support of his claim for benefits at the time of filing the petition to controvert because of a limitation of time established by Section 71-3-35 or Section 71-3-53, the claimant shall file medical records in support of his claim within sixty (60) days after filing the petition to controvert.

(2) Where a preexisting physical handicap, disease, or lesion is shown by medical findings to be a material contributing factor in the results following injury, the compensation which, but for this subsection, would be payable shall be reduced by that proportion which such preexisting physical handicap, disease, or lesion contributed to the production of the results following the injury. The preexisting condition does not have to be occupationally disabling for this apportionment to apply.

(3) The following provisions shall apply to subsections (1) and (2) of this section:

(a) Apportionment shall not be applied until the claimant has reached maximum medical recovery.

(b) The employer or carrier does not have the power to determine the date of maximum medical recovery or percentage of apportionment. This must be done by the attorney-referee, subject to review by the commission as the ultimate finder of fact.

(c) After the date the claimant reaches maximum medical recovery, weekly compensation benefits and maximum recovery shall be reduced by that proportion which the preexisting physical handicap, disease, or lesion contributes to the results following injury.

(d) If maximum medical recovery has occurred before the hearing and order of the attorney-referee, credit for excess payments shall be allowed in future payments. Such allowances and method of accomplishment of the same shall be determined by the attorney-referee, subject to review by the commission. However, no actual repayment of such excess shall be made to the employer or carrier.

(4) No compensation shall be payable if the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted thereunder, or intoxication due to the use of alcohol of the employee was the proximate cause of the injury, or if it was the willful intention of the employee to injure or kill himself or another.

(5) Every employer to whom this chapter applies shall be liable for and

shall secure the payment to his employees of the compensation payable under its provisions.

(6) In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor, unless the subcontractor has secured such payment.

HISTORY: Codes, 1942, § 6998-04; Laws, 1948, ch. 354, § 4; Laws, 1950, ch. 412, § 3; Laws, 1958, ch. 454, § 1; Laws, 1960, ch. 277; Laws, 1968, ch. 559, § 3; reenacted without change, Laws, 1982, ch. 473, § 4; reenacted without change, Laws, 1990, ch. 405, § 4; Laws, 2012, ch. 522, § 2, eff from and after July 1, 2012; Laws, 2022, ch. 303, § 67, eff from and after passage (approved February 2, 2022).

Amendment Notes —The 2022 amendment, effective February 2, 2022, in (4), inserted "or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted thereunder."

Cross References — Mississippi Medical Cannabis Act, see §§ 41-137-1 et seq.

JUDICIAL DECISIONS

ANALYSIS

2. Liability for payment.
49. Wage-earning potential.

2. Liability for payment.

Mississippi Workers' Compensation Commission did not err in failing to hold an employer and its insurance carrier responsible for an employee's treatment and medications at a health center after the employee reached maximum medical improvement because the finding that the treatment and medications were not reasonable and medically necessary to treat his work injury was supported by substantial evidence. Duren v. Effex Mgmt. Sols., LLC, — So. 3d —, 2022 Miss. App. LEXIS 195 (Miss. Ct. App. June 7, 2022).

49. Wage-earning potential.

Mississippi Workers' Compensation Commission did not err in denying permanent partial disability benefits to an employee because the employee failed to present persuasive medical evidence that his work injury resulted in a permanent disability that caused him to suffer a loss of wage-earning capacity; the administrative judge did not find the employee's subjective complaints of pain to be credible, and the employee failed to show that his post-injury wages were unreliable, as, among other things, upon returning to work, he continued to earn the same wages post-injury. Duren v. Effex Mgmt. Sols., LLC, — So. 3d —, 2022 Miss. App. LEXIS 195 (Miss. Ct. App. June 7, 2022).

Workers' Compensation Commission did not err in denying the worker permanent disability benefits because the Commission properly applied the rebuttable presumption that the worker suffered no loss of wage-earning capacity, as her post-injury wages were higher than her pre-injury wages, and substantial evidence supported the Commission's finding that the worker failed to rebut that presumption. McKenzie v. Howard Indus., 323 So. 3d 520, 2020 Miss. App. LEXIS 35 (Miss. Ct. App.), cert. denied, 302 So. 3d 643, 2020 Miss. LEXIS 384 (Miss. 2020).

§ 71-3-9. Exclusiveness of liability.

JUDICIAL DECISIONS

8. Negligent infliction of emotional distress.

Circuit court properly dismissed the negligence claims (negligence, negligent infliction of emotional distress, gross negligence, and negligent supervision) because the claims were barred by the exclusivity provisions of the Mississippi Workers' Compensation Act. Spiers v. Oak Grove Credit, LLC, 328 So. 3d 645, 2021 Miss. LEXIS 325 (Miss. 2021).

§ 71-3-29. Compromise, commutation, and lump sum payments.

JUDICIAL DECISIONS

1. In general.

Circuit court had jurisdiction to hear appellant's bad-faith claim against appellees and the circuit court erred by dismissing the complaint, as appellant exhausted his administrative remedies because he fully and finally settled his workers' compensation claim against appellees, the Mississippi Workers' Compensation Commission approved the settlement, and there was nothing left pending before the Commission. Thornhill v. Walker-Hill Envtl., — So. 3d —, 2021 Miss. App. LEXIS 429 (Miss. Ct. App. Oct. 19, 2021).

§ 71-3-47. Determination for claims for compensation.

JUDICIAL DECISIONS

11. Timeliness of petition.

Beneficent purposes of the Mississippi Workers' Compensation Act did not require reversal and remand of appellant's case for further proceedings before the Mississippi Workers' Compensation Commission because appellant had until March 22, 2018, to file a motion to reinstate his claim, but no pleadings or other documents were filed in the Commission file until October 2020 when appellant's attorney moved to reinstate his claim. At that point, a review of the claim was barred, as the Commission no longer had jurisdiction. Darty v. Gulfport-Biloxi Reg'l Airport Auth., — So. 3d —, 2022 Miss. App. LEXIS 257 (Miss. Ct. App. Aug. 9, 2022).

§ 71-3-53. Continuing jurisdiction of the commission.

JUDICIAL DECISIONS

3. Redetermination after review.

Workers' Compensation Commission erred in granting an employer's motion to reopen and in vacating its prior order approving the parties' settlement because, while the employee died after signing the settlement and before it was approved by the Commission, there was no dispute that there was a meeting of the minds prior to his death and the employer did not show how the employee's death after the settlement was signed by the parties and submitted to the Commission, had any bearing on the issue of whether the mistake of fact (the Commission's assumption that the employee was still alive when it approved the settlement) related to a valid reason for setting aside the settlement. Taylor v. Reliance Well Serv., 220 So. 3d 260, 2017 Miss. App. LEXIS 296 (Miss. Ct. App. 2017).

§ 71-3-63. Fees for legal and other services.

(1) No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the commission or, if proceedings for review of the order of the commission in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the commission or such court, be a lien upon such compensation.

(2) Any person (a) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the commission or such court, or (b) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine of not more than One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment.

(3) Representation of one other than himself or herself before the commission shall be considered the practice of law, and all statutes applying to and regulating the practice in all other courts of law in this state shall likewise apply to practice before the commission, insofar as the qualifications of those practicing before the commission are concerned. This paragraph shall not be construed as tightening the rules of evidence which are otherwise relaxed in other sections of this chapter.

In no instance shall the amount recovered by an attorney for an appearance before the commission exceed twenty-five percent (25%) of the total award of compensation. Such limitations, however, shall not be construed as applying to a fee awarded for additional services by any superior court. Legal services rendered where no motion to controvert has been filed by either employer or employee shall be considered as consultation, and that factor shall be taken into consideration in awarding a fee. Attorneys may not recover attorney's fees based upon benefits voluntarily paid to an injured employee for temporary or permanent disability. Any settlement negotiated by an attorney shall not be considered a voluntary payment. In all instances, fees shall be awarded on the basis of fairness to both attorney and client. Although exceptions may be made in the interest of justice, it shall be deemed conducive to the best interest of all concerned for the commission to approve contracts for attorney's fees voluntarily entered into between attorney and client, within the limitations hereinabove set out.

When an award of compensation becomes final and an attorney's fee is outstanding, a partial lump-sum settlement sufficient to cover the attorney's fee approved therein by the commission shall be made immediately, from payments last to become due, and the deductions allowed by the law shall be borne equally by the attorney and the client.

HISTORY: Codes, 1942, § 6998-32; Laws, 1948, ch. 354, § 26; Laws, 1950, ch. 412,

§ 12; reenacted without change, Laws, 1982, ch. 473, § 32; reenacted without change, Laws, 1990, ch. 405, § 33; Laws, 2012, ch. 522, § 7, eff from and after July 1, 2012.

Editor's Notes — This section is set out above to correct an error in subsection (3) as it appeared in the 2021 Replacement Volume 15.

§ 71-3-75. Security for payment of compensation.

JUDICIAL DECISIONS

3. Self-insurer.

In this Mississippi Workers' Compensation Act action, the dismissal of both workers' compensation claims was affirmed because when the employee died and her estate sought no benefits, the issue was rendered moot as to the employee's claims, and the Mississippi Workers' Compensation Commission had no reason to consider the issue because it could not affect the employee's rights in any way. Miss. Dep't of Econ. & Cmty. Dev. v. Gen. Reinsurance Corp., 341 So. 3d 121, 2021 Miss. App. LEXIS 490 (Miss. Ct. App. 2021), cert. denied, 339 So. 3d 796, 2022 Miss. LEXIS 171 (Miss. 2022).

§ 71-3-121. Drug and alcohol testing; employer's right to demand or administer; presumptions; admissibility of results.

(1) In the event that an employee sustains an injury at work or asserts a work-related injury, the employer shall have the right to administer drug and alcohol testing or require that the employee submit himself to drug and alcohol testing. If the employee has a positive test indicating the presence, at the time of injury, of any drug illegally used or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted thereunder, or eight one-hundredths percent (.08%) or more by weight volume of alcohol in the person's blood, it shall be presumed that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted thereunder, or the intoxication due to the use of alcohol by the employee. If the employee refuses to submit himself to drug and alcohol testing immediately after the alleged work-related injury, then it shall be presumed that the employee was using a drug illegally, or was using a valid prescription medication(s) contrary to the prescriber's instructions and/or contrary to label warnings, or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted thereunder, or was intoxicated due to the use of alcohol at the time of the accident and that the proximate cause of the injury was the use of a drug illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted

thereunder, or the intoxication due to the use of alcohol of the employee. The burden of proof will then be placed upon the employee to prove that the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted thereunder, or intoxication due to the use of alcohol was not a contributing cause of the accident in order to defeat the defense of the employer provided under Section 71-3-7.

(2) The results of the drug and alcohol tests, employer-administered or otherwise, shall be considered admissible evidence solely on the issue of causation in the determination of the use of drugs illegally, or the use of a valid prescription medication(s) taken contrary to the prescriber's instructions and/or contrary to label warnings, or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted thereunder, or the intoxication due to the use of alcohol of an employee at the time of injury for workers' compensation purposes under Section 71-3-7.

(3) No cause of action for defamation of character, libel, slander or damage to reputation arises in favor of any person against an employer under the provisions of this section.

HISTORY: Laws, 1992, ch. 577, § 7; Laws, 2012, ch. 522, § 8, eff from and after July 1, 2012; Laws, 2022, ch. 303, § 68, eff from and after passage (approved February 2, 2022).

Amendment Notes — The 2022 amendment, effective February 2, 2022, inserted "or the use of medical cannabis in accordance with the Mississippi Medical Cannabis Act and rules and regulations adopted thereunder" five times in (1) and once in (2).

Cross References — Mississippi Medical Cannabis Act, see § 41-137-1 et seq.

DRUG-FREE WORKPLACE WORKERS' COMPENSATION PREMIUM REDUCTION ACT

§ 71-3-207. Implementation of drug-free workplace program; qualification of employer of premium reduction.

Cross References — Compensation premium discount for employers who establish drug-fee workplace unaffected, unaltered by Mississippi Medical Cannabis Act, see § 41-137-13.

CHAPTER 5.

UNEMPLOYMENT COMPENSATION

Article 7. Contributions. 71-5-351
Article 11. Benefits. 71-5-501

ARTICLE 1.
GENERAL PROVISIONS.

§ 71-5-11. Definitions [Repealed effective July 1, 2023].

As used in this chapter, unless the context clearly requires otherwise:

A. "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year.

B. "Benefit year" with respect to any individual means the period beginning with the first day of the first week with respect to which he or she first files a valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year; and, thereafter, the period beginning with the first day of the first week with respect to which he or she next files this or her valid claim for benefits, and ending with the day preceding the same day of the same month in the next calendar year. Any claim for benefits made in accordance with Section 71-5-515 shall be deemed to be a "valid claim" for purposes of this subsection if the individual has been paid the wages for insured work required under Section 71-5-511(e).

C. "Contributions" means the money payments to the State Unemployment Compensation Fund required by this chapter.

D. "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

E. "Department" or "commission" means the Mississippi Department of Employment Security, Office of the Governor.

F. "Executive director" means the Executive Director of the Mississippi Department of Employment Security, Office of the Governor, appointed under Section 71-5-107.

G. "Employing unit" means this state or another state or any instrumentalities or any political subdivisions thereof or any of their instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions, any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or had in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such

employing unit for all purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work. All individuals performing services in the employ of an elected fee-paid county official, other than those related by blood or marriage within the third degree computed by the rule of the civil law to such fee-paid county official, shall be deemed to be employed by such county as the employing unit for all the purposes of this chapter. For purposes of defining an "employing unit" which shall pay contributions on remuneration paid to individuals, if two (2) or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one (1) of such corporations, then each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually dis- bursed by it to such individual and shall not be considered to have paid as remuneration to such individual such amounts actually disbursed to such individual by another of such corporations.

H. "Employer" means:

(1) Any employing unit which,

(a) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of One Thousand Five Hundred Dollars ($1,500.00) or more, except as provided in paragraph (9) of this subsection, or

(b) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year had in employment at least one (1) individual (irrespective of whether the same individual was in employment in each such day), except as provided in paragraph (9) of this subsection;

(2) Any employing unit for which service in employment, as defined in subsection I(3) of this section, is performed;

(3) Any employing unit for which service in employment, as defined in subsection I(4) of this section, is performed;

(4)(a) Any employing unit for which agricultural labor, as defined in subsection I(6) of this section, is performed;

(b) Any employing unit for which domestic service in employment, as defined in subsection I(7) of this section, is performed;

(5) Any individual or employing unit which acquired the organization tion, trade, business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this chapter;

(6) Any individual or employing unit which acquired its organization, trade, business, or substantially all the assets thereof, from another employing unit, if the employment record of the acquiring individual or employing unit subsequent to such acquisition, together with the employment record of the acquired organization, trade, or business prior to such acquisition, both within the same calendar year, would be sufficient to

constitute an employing unit as an employer subject to this chapter under paragraph (1) or (3) of this subsection;

(7) Any employing unit which, having become an employer under paragraph (1), (3), (5) or (6) of this subsection or under any other provisions of this chapter, has not, under Section 71-5-361, ceased to be an employer subject to this chapter;

(8) For the effective period of its election pursuant to Section 71-5-361(3), any other employing unit which has elected to become subject to this chapter;

(9)(a) In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraph (1) or (4)(a) of this subsection, the wages earned or the employment of an employee performing domestic service, shall not be taken into account;

(b) In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraph (1) or (4)(b) of this subsection, the wages earned or the employment of an employee performing services in agricultural labor, shall not be taken into account. If an employing unit is determined an employer of agricultural labor, such employing unit shall be determined an employer for purposes of paragraph (1) of this subsection;

(10) All entities utilizing the services of any employee leasing firm shall be considered the employer of the individuals leased from the employee leasing firm. Temporary help firms shall be considered the employer of the individuals they provide to perform services for other individuals or organizations.

I. "Employment" means and includes:

(1) Any service performed, which was employment as defined in this section and, subject to the other provisions of this subsection, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) Services performed for remuneration for a principal:

(a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services;

(b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operator of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

However, for purposes of this subsection, the term "employment" shall include services described in paragraphs (2)(a) and (b) of this subsection, only if:

(i) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(ii) The individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and

(iii) The services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(3) Service performed in the employ of this state or any of its instrumentalities or any political subdivision thereof or any of its instrumentalities or any instrumentality of more than one (1) of the foregoing or any instrumentality of any of the foregoing and one or more other states or political subdivisions or any Indian tribe as defined in Section 3306(u) of the Federal Unemployment Tax Act (FUTA), which includes any subdivision, subsidiary or business enterprise wholly owned by such Indian tribe; however, such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by Section 3306(c)(7) of that act and is not excluded from "employment" under paragraph (5) of this subsection.

(4)(a) Services performed in the employ of a religious, charitable, educational, or other organization, but only if the service is excluded from "employment" as defined in the Federal Unemployment Tax Act, 26 USCS Section 3306(c)(8), and

(b) The organization had four (4) or more individuals in employment for some portion of a day in each of twenty (20) different weeks, whether or not such weeks were consecutive, within the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(5) For the purposes of paragraphs (3) and (4) of this subsection, the term "employment" does not apply to service performed:

(a) In the employ of:

(i) A church or convention or association of churches; or

(ii) An organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(b) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, or by a member of a religious order in the exercise of duties required by such order; or

(c) In the employ of a governmental entity referred to in paragraph (3) of this subsection, if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body, or a member of the judiciary, of a state or political subdivision or a member of an Indian tribal council;

(iii) As a member of the State National Guard or Air National Guard;

(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) In a position which, under or pursuant to the laws of this state or laws of an Indian tribe, is designated as:

1. A major nontenured policy-making or advisory position, or

2. A policy-making or advisory position the performance of the duties of which ordinarily does not require more than eight (8) hours per week; or

(d) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; or

(e) By an inmate of a custodial or penal institution; or

(f) As part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training, unless coverage of such service is required by federal law or regulation.

(6) Service performed by an individual in agricultural labor as defined in paragraph (15)(a) of this subsection when:

(a) Such service is performed for a person who:

(i) During any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of Twenty Thousand Dollars ($20,000.00) or more to individuals employed in agricultural labor, or

(ii) For some portion of a day in each of twenty (20) different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor ten (10) or more individuals, regardless of whether they were employed at the same moment of time.

(b) For the purposes of this paragraph (6) any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(i) If such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(ii) If such individual is not an employee of such other person within the meaning of paragraph (1) of this subsection.

(c) For the purpose of this paragraph (6), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (6)(b) of this subsection:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) Such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his or her own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(d) For the purposes of this paragraph (6) the term "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) Pays (either on his or her own behalf or on behalf of such other person) the individuals so furnished by him or her for the service in agricultural labor performed by them; and

(iii) Has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(7) The term "employment" shall include domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for an employing unit which paid cash remuneration of One Thousand Dollars ($1,000.00) or more in any calendar quarter in the current or the preceding calendar year to individuals employed in such domestic service. For the purpose of this subsection, the term "employment" does not apply to service performed as a "sitter" at a hospital in the employ of an individual.

(8) An individual's entire service, performed within or both within and without this state, if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service is performed in this state; and

(i) The base of operations or, if there is no base of operations, the place from which such service is directed or controlled is in this state; or

(ii) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(9) Services not covered under paragraph (8) of this subsection and performed entirely without this state, with respect to no part of which

contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this chapter.

(10) Service shall be deemed to be localized within a state if:

(a) The service is performed entirely within such state; or

(b) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state; for example, is temporary or transitory in nature or consists of isolated transactions.

(11) The services of an individual who is a citizen of the United States, performed outside the United States (except in Canada), in the employ of an American employer (other than service which is deemed "employment" under the provisions of paragraph (8), (9) or (10) of this subsection or the parallel provisions of another state's law), if:

(a) The employer's principal place of business in the United States is located in this state; or

(b) The employer has no place of business in the United States; but

(i) The employer is an individual who is a resident of this state; or

(ii) The employer is a corporation which is organized under the laws of this state; or

(iii) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one (1) other state; or

(c) None of the criteria of subparagraphs (a) and (b) of this paragraph are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state; or

(d) An "American employer," for purposes of this paragraph, means a person who is:

(i) An individual who is a resident of the United States; or

(ii) A partnership if two-thirds (2/3) or more of the partners are residents of the United States; or

(iii) A trust if all of the trustees are residents of the United States; or

(iv) A corporation organized under the laws of the United States or of any state.

(12) All services performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable

waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this state, notwithstanding the provisions of paragraph (8) of this subsection.

(13) Service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund, or which as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, 26 USCS Section 3301 et seq., is required to be covered under this chapter, notwithstanding any other provisions of this subsection.

(14) Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that such individual has been and will continue to be free from control and direction over the performance of such services both under his or her contract of service and in fact; and the relationship of employer and employee shall be determined in accordance with the principles of the common law governing the relation of master and servant.

(15) The term "employment" shall not include:

(a) Agricultural labor, except as provided in paragraph (6) of this subsection. The term "agricultural labor" includes all services performed:

(i) On a farm or in a forest in the employ of any employing unit in connection with cultivating the soil, in connection with cutting, planting, deadening, marking or otherwise improving timber, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals and wildlife;

(ii) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(iii) In connection with the production or harvesting of naval stores products or any commodity defined in the Federal Agricultural Marketing Act, 12 USCS 1141j(f), or in connection with the raising or harvesting of mushrooms, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(iv)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading,

storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(B) In the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subitem (A), but only if such operators produced more than one-half (1/2) of the commodity with respect to which such service is performed;

(C) The provisions of subitems (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(v) On a farm operated for profit if such service is not in the course of the employer's trade or business;

(vi) As used in paragraph (15)(a) of this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in paragraph (7) of this subsection, or service performed as a "sitter" at a hospital in the employ of an individual.

(c) Casual labor not in the usual course of the employing unit's trade or business.

(d) Service performed by an individual in the employ of his or her son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his or her father or mother.

(e) Service performed in the employ of the United States government or of an instrumentality wholly owned by the United States; except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, then to the extent permitted by Congress and from and after the date as of which such permission becomes effective, all of the provisions of this chapter shall be applicable to such instrumentalities and to services performed by employees for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers and employing units. If this state should not be certified under the Federal Unemployment Tax Act, 26 USCS Section 3304(c), for any year, then the payment required by such instrumentality with respect to such year shall be deemed to have

been erroneously collected and shall be refunded by the department from the fund in accordance with the provisions of Section 71-5-383.

(f) Service performed in the employ of an "employer" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(a), or as an "employee representative" as defined by the Railroad Unemployment Insurance Act, 45 USCS Section 351(f), and service with respect to which unemployment compensation is payable under an unemployment compensation system for maritime employees, or under any other unemployment compensation system established by an act of Congress; however, the department is authorized and directed to enter into agreements with the proper agencies under such act or acts of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner provided in Section 71-5-117 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such act or acts of Congress or who have, after acquiring potential rights to unemployment compensation under such act or acts of Congress, acquired rights to benefits under this chapter.

(g) Service performed in any calendar quarter in the employ of any organization exempt from income tax under the Internal Revenue Code, 26 USCS Section 501(a) (other than an organization described in 26 USCS Section 401(a)), or exempt from income tax under 26 USCS Section 521 if the remuneration for such service is less than Fifty Dollars ($50.00).

(h) Service performed in the employ of a school, college, or university if such service is performed:

(i) By a student who is enrolled and is regularly attending classes at such school, college or university, or

(ii) By the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that

(A) The employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and

(B) Such employment will not be covered by any program of unemployment insurance.

(i) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf

of an employer or group of employers.

(j) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital, as defined in subsection M of this section.

(k) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and services performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law.

(*l*) Service performed by an individual as an insurance agent or as an insurance solicitor, if all such service performed by such individual is performed for remuneration solely by way of commission.

(m) Service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, except those employed by political subdivisions, state and local governments, non- profit organizations and Indian tribes, as defined by this chapter, or any other entities for which coverage is required by federal statute and regulation.

(n) If the services performed during one-half (1/2) or more of any pay period by an employee for the employing unit employing him or her constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half (1/2) of any such pay period by an employee for the employing unit employing him or her do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one (31) consecutive days) for which a payment of remuneration is ordinarily made to the employee by the employing unit employing him or her.

(o) Service performed by a barber or beautician whose work station is leased to him or her by the owner of the shop in which he or she works and who is compensated directly by the patrons he or she serves and who is free from direction and control by the lessor.

(p) Service performed by a "direct seller" if:

(i) Such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the department prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment; or such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment;

(ii) Substantially all the remuneration (whether or not paid in cash) for the performance of the services described in item (i) of this subparagraph is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(iii) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal tax purposes.

J. "Employment office" means a free public employment office or branch thereof, operated by this state or maintained as a part of the state controlled system of public employment offices.

K. "Public employment service" means the operation of a program that offers free placement and referral services to applicants and employers, including job development.

L. "Fund" means the Unemployment Compensation Fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

M. "Hospital" means an institution which has been licensed, certified, or approved by the State Department of Health as a hospital.

N. "Institution of higher learning," for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) Is legally authorized in this state to provide a program of education beyond high school;

(3) Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation;

(4) Is a public or other nonprofit institution;

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher learning for purposes of this section.

O. "Re-employment assistance" means money payments payable to an individual as provided in this chapter and in accordance with Section 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act and Section303(a)(5) of the Social Security Act, with respect to his or her unemployment through no fault of his or her own. Wherever the terms "benefits" or "unemployment benefits" appear in this chapter, they shall mean re- employment assistance.

P.(1) "State" includes, in addition to the states of the United States of America, the District of Columbia, Commonwealth of Puerto Rico and the

Virgin Islands.

(2) The term "United States" when used in a geographical sense includes the states, the District of Columbia, Commonwealth of Puerto Rico and the Virgin Islands.

(3) The provisions of paragraphs (1) and (2) of this subsection P, as including the Virgin Islands, shall become effective on the day after the day on which the United States Secretary of Labor approves for the first time under Section 3304(a) of the Internal Revenue Code of 1954 an unemployment compensation law submitted to the secretary by the Virgin Islands for such approval.

Q. "Unemployment."

(1) An individual shall be deemed "unemployed" in any week during which he or she performs no services and with respect to which no wages are payable to him or her, or in any week of less than full-time work if the wages payable to him or her with respect to such week are less than his or her weekly benefit amount as computed and adjusted in Section 71-5-505. This definition shall exclude individuals receiving voluntary payments from employers, from any source, that are in lieu of the worker's regular wages. However, individuals receiving voluntary payments of less than their set full weekly wage, as well as individuals who do not work a specified number of hours each week resulting in inconsistent weekly wages, and who are receiving voluntary payments for partial wage substitution, may be considered "unemployed," but would be required to report the gross amount of the voluntary payments to be treated as wages so the appropriate deductions to the weekly benefit amount can be made. The department shall prescribe regulations applicable to unemployed individuals, making such distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department deems necessary.

(2) An individual's week of total unemployment shall be deemed to commence only after his registration with an employment office, except as the department may by regulation otherwise prescribe.

(3) Unemployment shall not include administrative leave for any week with respect to which:

(a) An employer has designated their employee as being on official administrative leave;

(b) The administrative leave is for a specified period of time;

(c) There is no apparent permanent job separation; and

(d) The employee has received compensation equal to his or her standard compensation.

(4) If the individual on official administrative leave, as designated by the employer, does not receive full compensation in line with his or her standard hours or salary, the individual may be eligible for unemployment insurance benefits as partially unemployed for the wages they are missing.

(5) Any individual on official administrative leave is required to report all compensation received.

R.(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that "wages," for purposes of determining employer's coverage and payment of contributions for agricultural and domestic service means cash remuneration only. Wages shall include payments from employers, from any source, and for any reason, that are in lieu of the employee's regular wages. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department; however, that the term "wages" shall not include:

(a) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employer which makes provision for his or her employees generally or for a class or classes of his or her employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of:

(i) Retirement, or

(ii) Sickness or accident disability, or

(iii) Medical or hospitalization expenses in connection with sickness or actual disability, or

(iv) Death, provided the employee:

(A) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by his or her employer, and

(B) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive a cash consideration in lieu of such benefit, either upon his or her withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his or her employment with such employer;

(b) Dismissal payments which the employer is not legally required to make;

(c) Payment by an employer (without deduction from the remuneration of an employee) of the tax imposed by the Internal Revenue Code, 26 USCS Section 3101;

(d) From and after January 1, 1992, the amount of any payment made to or on behalf of an employee for a "cafeteria" plan, which meets the following requirements:

(i) Qualifies under Section 125 of the Internal Revenue Code;

(ii) Covers only employees;

(iii) Covers only noncash benefits;

(iv) Does not include deferred compensation plans.

(2) [Not enacted].

S. "Week" means calendar week or such period of seven (7) consecutive days as the department may by regulation prescribe. The department may by regulation prescribe that a week shall be deemed to be in, within, or during any benefit year which includes any part of such week.

T. "Insured work" means "employment" for "employers."

U. The term "includes" and "including," when used in a definition contained in this chapter, shall not be deemed to exclude other things otherwise within the meaning of the term defined.

V. "Employee leasing arrangement" means any agreement between an employee leasing firm and a client, whereby specified client responsibilities such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other such administrative duties are to be performed by an employee leasing firm, on an ongoing basis.

W. "Employee leasing firm" means any entity which provides specified duties for a client company such as payment of wages, reporting of wages for unemployment insurance purposes, payment of unemployment insurance contributions and other administrative duties, in connection with the client's employees, that are directed and controlled by the client and that are providing ongoing services for the client.

X.(1) "Temporary help firm" means an entity which hires its own employees and provides those employees to other individuals or organizations to perform some service, to support or supplement the existing workforce in special situations such as employee absences, temporary skill shortages, seasonal workloads and special assignments and projects, with the expectation that the worker's position will be terminated upon the completion of the specified task or function.

(2) "Temporary employee" means an employee assigned to work for the clients of a temporary help firm.

Y. For the purposes of this chapter, the term "notice" shall include any official communication, statement or other correspondence required under the administration of this chapter, and sent by the department through the United States Postal Service or electronic or digital transfer, via modem or the Internet.

HISTORY: Codes, 1942, § 7440; Laws, 1940, ch. 295, § 13; Laws, 1948, ch. 412, § 10; Laws, 1955, Ex. Sess. ch. 93, § 2; Laws, 1971, ch. 519, § 13; Laws, 1977, ch. 497, § 1; Laws, 1978, ch. 533, § 1; Laws, 1979, ch. 311; Laws, 1981, ch. 343, § 1; Laws, 1983, ch. 371, § 1; Laws, 1985, ch. 406; Laws, 1992, ch. 339, § 1; Laws, 1993, ch. 328, § 1; Laws, 1998, ch. 331, § 1; Laws, 1998, ch. 491, § 1; Laws, 2002, ch. 562, § 1; Laws, 2004, ch. 572, § 9; Laws, 2007, ch. 606, § 3; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 9; reenacted and amended, Laws, 2011, ch. 471, § 9; Laws, 2012, ch. 414, § 1; reenacted without change, Laws, 2012, ch. 515, § 9; Laws, 2013, ch. 309, § 3, eff from and after passage (approved March 6, 2013); reenacted without change, Laws, 2019, ch. 451, § 9, eff from and after April 3, 2019; Laws, 2021, ch. 360, § 1, eff from and after July 1, 2021.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in the second paragraph of I(2)(b) by substituting "paragraphs (2)(a) and (b)" for "paragraph (2)(a) and (b)." The Joint Committee ratified the correction at its August 10, 2022, meeting.

JUDICIAL DECISIONS

2. Determination of employment status.

Decision of the Mississippi Department of Employment Security Board of Review that an employer-employee relationship existed between a company and a worker was not supported by substantial evidence because his employment status constituted that of an independent contractor; the worker was not supervised, he was not required to work certain hours or to accept a certain number of customers, and the company did not pay him a salary or hourly fee, but he was compensated through his customers. Gulf Coast Transit Servs., LLC v. Miss. Dep't of Emp. Sec., 333 So. 3d 110, 2022 Miss. App. LEXIS 10 (Miss. Ct. App. 2022).

ARTICLE 7.

CONTRIBUTIONS.

Sec.

71-5-353. Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances.

71-5-355. Modified rates.

§ 71-5-353. Rate of contributions; reduction in contribution rate for certain employers; distribution of contributions; suspension of Workforce Enhancement Training contributions under certain circumstances.

(1)(a) Each employer shall pay unemployment insurance contributions equal to five and four-tenths percent (5.4%) of taxable wages paid by him each calendar year, except as may be otherwise provided in Section 71-5-361 and except that each newly subject employer shall pay unemployment insurance contributions at the rate of one percent (1%) of taxable wages, for his first year of liability, one and one-tenth percent (1.1%) of taxable wages for his second year of liability, and one and two-tenths percent (1.2%) of taxable wages for his third and subsequent years of liability unless the employer's experience-rating record has been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the rate for a year is determined; thereafter the employer's contribution rate shall be determined in accordance with the provisions of Section 71-5-355.

(b) Notwithstanding the newly subject employer contribution rate provided for in paragraph (a) of this subsection, the contribution rate of all newly subject employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar year 2013 only. The contribution rate of all newly

subject employers shall be reduced by three one-hundredths of one percent (.03%) for calendar year 2014 only. For purposes of this chapter, "newly subject employers" means employers whose unemployment insurance experience-rating record has not been chargeable throughout at least the twelve (12) consecutive calendar months ending on the most recent computation date at the time the contribution rate for a year is determined.

(2)(a)(i) There is hereby created in the Treasury of the State of Mississippi special funds to be known as the "Mississippi Workforce Enhancement Training Fund" and the "Mississippi Works Fund" which consist of funds collected pursuant to subsection (3) of this section.

(ii) Funds collected shall initially be deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently appropriate amounts shall be transferred to the Mississippi Workforce Investment and Training Fund Holding Account described in Section 71-5-453. In the event any employer pays an amount insufficient to cover the total contributions due, the amounts due shall be satisfied in the following order:

1. Unemployment contributions;

2. Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and the Mississippi Works contributions, known collectively as the Mississippi Workforce Investment and Training contributions, on a pro rata basis;

3. Interest and damages; then

4. Legal and processing costs.

The amount of unemployment insurance contributions due for any period will be the amount due according to the actual computations unless the employer is participating in the MLPP. In that event, the amount due is the MLPP amount computed by the department.

Cost of collection and administration of the Mississippi Workforce Enhancement Training contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be allocated based on a plan approved by the United States Department of Labor (USDOL). The Mississippi Community College Board shall pay the cost of collecting the Mississippi Workforce Enhancement Training contributions, the State Workforce Investment Board shall pay the cost of collecting the State Workforce Investment contributions and the Mississippi Department of Employment Security shall pay the cost of collecting the Mississippi Works contributions. Payments shall be made semiannually with the cost allocated to each based on a USDOL approved plan on a pro rata basis, for periods ending in June and December of each year. Payment shall be made by each organization to the department no later than sixty (60) days after the billing date. Cost shall be allocated under the USDOL's approved plan and in the same ratio as each contribution type represents to the total authorized by subparagraph (ii)2 of this paragraph to be collected for the period.

(b) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be distributed as follows:

(i) For calendar year 2014, ninety-four and seventy-five one-hundredths percent (94.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(ii) For calendar years subsequent to calendar year 2014, ninety-three and seventy-five one-hundredths percent (93.75%) shall be distributed to the Mississippi Workforce Enhancement Training Fund and the remainder shall be distributed to the State Workforce Investment Board bank account;

(iii) Workforce Enhancement Training contributions and State Workforce Investment contributions for calendar years 2014 and 2015 shall be distributed as provided in subparagraphs (i) and (ii) of this paragraph regardless of when the contributions were collected.

(c) All contributions collected for the State Workforce Enhancement Training Fund, the State Workforce Investment Fund and the Mississippi Works Fund will be initially deposited into the Mississippi Department of Employment Security bank account for clearing contribution collections and subsequently transferred to the Workforce Investment and Training Holding Account and will be held by the Mississippi Department of Employment Security in such account for a period of not less than thirty (30) days. After such period, the Mississippi Workforce Enhancement Training contributions shall be transferred to the Mississippi Community College Board Treasury Account, with oversight provided by the Mississippi Office of Workforce Development, the State Workforce Investment contributions and the Mississippi Works contributions shall be transferred to the Mississippi Department of Employment Security Mississippi Works Treasury Account in the same ratio as each contribution type represents to the total authorized by paragraph (a)(ii)2 of this subsection to be collected for the period and within the time frame determined by the department; however, except in cases of extraordinary circumstances, these funds shall be transferred within fifteen (15) days. Interest earnings or interest credits on deposit amounts in the Workforce Investment and Training Holding Account shall be retained in the account to pay the banking costs of the account. If after the period of twelve (12) months interest earnings less banking costs exceeds Ten Thousand Dollars ($10,000.00), such excess amounts shall be transferred to the respective accounts within thirty (30) days following the end of each calendar year on the basis described in paragraph (b) of this subsection. Interest earnings and/or interest credits for the State Workforce Investments funds shall be used for the payment of banking costs and excess amounts shall be used in accordance with the rules and regulations of the State Workforce Investment Board expenditure policies.

(d) All enforcement procedures for the collection of delinquent unemployment contributions contained in Sections 71-5-363 through 71-5-383 shall be applicable in all respects for collections of delinquent unemployment insurance contributions designated for the Unemployment Compensation Fund, the Mississippi Workforce Enhancement Training Fund, the State Workforce Investment Board Fund and the Mississippi Works Fund.

(e)(i) Except as otherwise provided for in this subparagraph (i), all monies deposited into the Mississippi Workforce Enhancement Training Fund Treasury Account shall be directed by the Mississippi Office of Workforce Development, in collaboration with the Mississippi Community College Board, in accordance with the Workforce Training Act of 1994 (Section 37-153-1 et seq.) and under policies approved by the Mississippi Office of Workforce Development for the following purposes: to provide training in collaboration with the Mississippi Community College Board and individual community and junior colleges to employers and employees in order to enhance employee productivity. Such training may be subject to a minimal administrative fee to be paid from the Mississippi Workforce Enhancement Training Fund as established by the Office of Workforce Development. The initial priority of these funds shall be for the benefit of existing businesses located within the state. Employers may request training for existing employees and/or newly hired employees from the Mississippi Office of Workforce Development. The office, in consultation with the Mississippi Community College Board, will be responsible for approving the training. A portion of the funds collected for the Mississippi Workforce Enhancement Training Fund shall be used for the development of performance measures to measure the effectiveness of the use of the Mississippi Workforce Enhancement Training Fund dollars. These performance measures shall be uniform for all training projects and shall be reported to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature. Nothing in this section or elsewhere in law shall be interpreted as giving the Office of Workforce Development or State Workforce Investment Board authority to direct the Mississippi Community College Board or individual community or junior colleges on how to expend other funds, aside from funds appropriated to the Mississippi Workforce Enhancement Training Fund and Mississippi Works Fund, appropriated or received for workforce training. The Mississippi Office of Workforce Development, Mississippi Community College Board, individual community or junior colleges, State Workforce Investment Board and other agencies implementing or coordinating state-funded workforce development programs under state law shall cooperate with each other to promote effective workforce training in Mississippi, under the direction of the office. Any subsequent changes to these performance measures shall also be reported to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature. A performance report for each training project and community college, based upon these measures, shall be submitted annually to the Governor, Lieutenant Governor, Speaker of the House, and members of the Legislature.

(ii) Except as otherwise provided in this paragraph (e), all funds deposited into the State Workforce Investment Board bank account shall be used for administration of State Workforce Investment Board business, the Office of Workforce Development, grants related to training, and other projects as determined appropriate by the State Workforce Investment

Board and shall be nonexpiring. Policies for grants and other projects shall be approved through a majority vote of the State Workforce Investment Board.

(iii) All funds deposited into the Mississippi Department of Employment Security Mississippi Works Fund shall be disbursed exclusively by the Executive Director of the Mississippi Department of Employment Security, in accordance with the rules and regulations promulgated by the Office of Workforce Development in support of workforce training activities approved by the Mississippi Office of Workforce Development in support of economic development activities. Funds allocated by the executive director under this subparagraph (iii) shall only be utilized for the training of unemployed persons, for immediate training needs for the net new jobs created by an employer, for the retention of jobs, to create a work-ready applicant pool of Mississippians with credentials and/or post-secondary education in accordance with the state's Workforce Investment and Opportunity Act plan, or for the support of local economic and community development activities related to workforce development in the state. The Mississippi Office of Workforce Development, in collaboration with the Mississippi Public Community College System and its partners, shall be the primary entity to facilitate training. Training conducted utilizing these Mississippi Works funds may be subject to a minimal administrative fee to be paid from the Mississippi Works Fund as authorized by the Mississippi Office of Workforce Development. All costs associated with the administration of these funds shall be reimbursed to the Mississippi Department of Employment Security from the Mississippi Works Fund.

(iv)1. The Department of Employment Security shall be the fiscal agent for the receipt and disbursement of all funds in the State Workforce Investment Board bank account, subject to the administrative oversight of the Office of Workforce Development.

2. In managing the State Workforce Investment Board bank account, the Office of Workforce Development, in coordination with the Mississippi Department of Employment Security as fiscal agent, shall ensure that any funds expended for contractual services rendered to the Office of Workforce Development over Five Thousand Dollars ($5,000.00) shall be paid only to service providers who have been selected on a competitive basis. Any contract for services entered into using funds from the Workforce Investment Fund bank account shall meet the requirements for state contracts set out in Section 31-7-1 et seq.

3. Any commodities procured for the office shall be procured in accordance with the provisions of Section 31-7-13.

(v) In addition to other expenditures, the Office of Workforce Development shall expend from the State Workforce Investment Board bank account for the use and benefit of the Office of Workforce Development, such funds as are necessary to prepare and develop a study of workforce development needs that will consist of the following:

1. An identification of the state's workforce development needs through a well-documented quantitative and qualitative analysis of:

a. The current and projected workforce training needs of existing and identified potential Mississippi industries, with priority given to assessing the needs of existing in-state industry and business. Where possible, the analysis should include a verification and expansion of existing information previously developed by workforce training and service providers, as well as analysis of existing workforce data, such as the data collected through the Statewide Longitudinal Data System;

b. The needs of the state's workers and residents requiring additional workforce training to improve their work skills in order to compete for better employment opportunities, including a priority-based analysis of the critical factors currently limiting the state's ability to provide a trained and ready workforce; and

c. The needs of workforce service and training providers in improving their ability to offer industry-relevant training, including an assessment of the practical limits of keeping training programs on the leading edge and eliminating those programs with marginal workforce relevance.

2. An assessment of Mississippi's current workforce development service delivery structure relative to the needs quantified in this subparagraph, including:

a. Development of a list of strengths/weaknesses/opportunities/threats (SWOT) of the current workforce development delivery system relative to the identified needs;

b. Identification of strategic options for workforce development services based on the results of the SWOT analysis; and

c. Development of results-oriented measures for each option that can be baselined and, if implemented, tracked over time, with quantifiable milestones and goals.

3. Preparation of a report presenting all subjects set out in this subparagraph to be delivered to the Lieutenant Governor, Speaker of the House of Representatives, Chairman of the Senate Finance Committee and Chairman of the House Appropriations Committee no later than February 1, 2015.

4. Following the preparation of the report, the State Workforce Investment Board shall make a recommendation to the House and Senate Appropriations Committees on future uses of funds deposited to the State Workforce Investment Fund account. Such future uses may include:

a. The development of promotion strategies for workforce development programs;

b. Initiatives designed to reduce the state's dropout rate, including the development of a statewide career awareness program;

c. The long-term monitoring of the state's workforce development

programs to determine whether they are addressing the needs of business, industry, and the workers of the state; and

d. The study of the potential restructuring of the state's workforce programs and delivery systems.

(3)(a)(i) Mississippi Workforce Enhancement Training contributions and State Workforce Investment contributions shall be collected at the following rates:

1. For calendar year 2014 only, the rate of nineteen one-hundredths of one percent (.19%) based upon taxable wages of which eighteen one-hundredths of one percent (.18%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution; and

2. For calendar year 2015 only, the rate of sixteen one-hundredths of one percent (.16%), based upon taxable wages of which fifteen one-hundredths of one percent (.15%) shall be the Workforce Enhancement Training contribution and one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution.

(ii) Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contributions shall be collected at the following rates:

1. For calendar year 2016 only, at a rate of twenty-four one-hundredths percent (.24%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and eight one-hundredths percent (.08%) shall be the Mississippi Works contribution.

2. For calendar years subsequent to calendar year 2016, at a rate of twenty one-hundredths percent (.20%), based upon taxable wages, of which fifteen one-hundredths percent (.15%) shall be the Workforce Enhancement Training contribution, one-hundredths of one percent (.01%) shall be the State Workforce Investment contribution and four one-hundredths percent (.04%) shall be the Mississippi Works contribution. The Mississippi Works contribution shall be collected for calendar years in which the general experience ratio, adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%), results in a general experience rate of less than two-tenths percent (.2%). In all other years the Mississippi Works contribution shall not be in effect.

(iii) The Mississippi Workforce Enhancement Training Fund contribution, the State Workforce Investment contribution and the Mississippi Works contribution shall be in addition to the general experience rate plus the individual experience rate of all employers but shall not be charged to reimbursing or rate-paying political subdivisions or institutions of higher learning, or reimbursing nonprofit organizations, as described in Sections 71-5-357 and 71-5-359.

(b) All Mississippi Workforce Enhancement Training contributions, State Workforce Investment contributions and Mississippi Works contribu-

tions collected shall be deposited initially into the Mississippi Department of Employment Security bank account for clearing contribution collections and shall within two (2) business days be transferred to the Workforce Investment and Training Holding Account. Any Mississippi Workforce Enhancement Training Fund and/or State Workforce Investment Board bank account and/or Mississippi Works Fund transactions from the Mississippi Department of Employment Security bank account for clearing contribution collections that are deposited into the Workforce Investment and Training Fund Holding Account and are not honored by a financial institution will be transferred back to the Mississippi Department of Employment Security bank account for clearing contribution collections out of funds in the Mississippi Workforce Investment and Training Fund Holding Account.

(c) Suspension of the Workforce Enhancement Training Fund contributions required pursuant to this chapter shall occur if the insured unemployment rate exceeds an average of five and five-tenths percent (5.5%) for the three (3) consecutive months immediately preceding the effective date of the new rate year following such occurrence and shall remain suspended throughout the duration of that rate year. Such suspension shall continue until such time as the three (3) consecutive months immediately preceding the effective date of the next rate year that has an insured unemployment rate of less than an average of four and five-tenths percent (4.5%). Upon such occurrence, reactivation shall be effective upon the first day of the rate year following the event that lifts suspension and shall be in effect for that year and shall continue until such time as a subsequent suspension event as described in this chapter occurs.

(d) Notwithstanding any other provision contained herein, contribution collections for the State Workforce Investment Fund, Mississippi Works Fund and Mississippi Workforce Enhancement Training Fund shall not be suspended, under any circumstances, for tax rate year 2021, and the resulting contribution rate of twenty one-hundredths percent (.20%) shall be added to the employer's general and individual experience rate to obtain the total unemployment insurance rate for 2021.

(4) All collections due or accrued prior to any suspension of the Mississippi Workforce Enhancement Training Fund will be collected based upon the law at the time the contributions accrued, regardless of when they are actually collected.

HISTORY: Codes, 1942, § 7391; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4b; Laws, 1950, ch. 454, § 1b; Laws, 1952, ch. 383, § 2b; Laws, 1956, ch. 404, § 2b; Laws, 1958, ch. 533, § 5b; Laws, 1962, ch. 564, § 2b; Laws, 1964, ch. 442, § 2b; Laws, 1971, ch. 519, § 7; Laws, 1979, ch. 465, § 1; Laws, 1984, ch. 301, § 1; Laws, 1998, ch. 331, § 3; Laws, 1998, ch. 491, § 2; Laws, 2005, ch. 437, § 1; Laws, 2010, ch. 302, § 1; Laws, 2010, ch. 504, § 2; Laws, 2013, ch. 309, § 6; Laws, 2014, ch. 504, § 1; Laws, 2016, ch. 302, § 1, eff from and after passage (approved Mar. 21, 2016); Laws, 2020, ch. 445, § 2, eff from and after July 1, 2020; Laws, 2020, ch. 476, § 5, eff from and after July 1, 2020; Laws, 2022, ch. 489, § 1, eff from and after July 1, 2022.

Amendment Notes — The 2022 amendment, in (2)(e), in (iii), added "or for the

support...in the state" in the second sentence, and deleted the former third through fifth and seventh sentences, in (iv)2., in the first sentence, inserted "over Five Thousand Dollars ($5,000.00)," and rewrote the former second and third sentences; and made minor punctuation and stylistic changes.

§ 71-5-355. Modified rates.

(1) As used in this section, the following words and phrases shall have the following meanings, unless the context clearly requires otherwise:

(a) "Tax year" means any period beginning on January 1 and ending on December 31 of a year.

(b) "Computation date" means June 30 of any calendar year immediately preceding the tax year during which the particular contribution rates are effective.

(c) "Effective date" means January 1 of the tax year.

(d) Except as hereinafter provided, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H, plus the total of all remuneration paid by such employer excluded from the definition of wages by Section 71-5-351. For the computation of modified rates, "payroll" means the total of all wages paid for employment by an employer as defined in Section 71-5-11, subsection H.

(e) For the computation of modified rates, "eligible employer" means an employer whose experience-rating record has been chargeable with benefits throughout the thirty-six (36) consecutive calendar-month period ending on the computation date, except that any employer who has not been subject to the Mississippi Employment Security Law for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement shall be an eligible employer if his or her experience-rating record has been chargeable throughout not less than the twelve (12) consecutive calendar-month period ending on the computation date. No employer shall be considered eligible for a contribution rate less than five and four-tenths percent (5.4%) with respect to any tax year, who has failed to file any two (2) quarterly reports within the qualifying period by September 30 following the computation date. No employer or employing unit shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which the employing unit is found by the department to be in violation of Section 71-5-19(2) or (3) and for the next two (2) succeeding tax years. No representative of such employing unit who was a party to a violation as described in Section 71-5-19(2) or (3), if such representative was or is an employing unit in this state, shall be eligible for a contribution rate of less than five and four-tenths percent (5.4%) for the tax year in which such violation was detected by the department and for the next two (2) succeeding tax years.

(f) With respect to any tax year, "reserve ratio" means the ratio which the total amount available for the payment of benefits in the Unemployment Compensation Fund, excluding any amount which has been credited to the account of this state under Section 903 of the Social Security Act, as amended, and which has been appropriated for the expenses of administra-

tion pursuant to Section 71-5-457 whether or not withdrawn from such account, on October 31 (close of business) of each calendar year bears to the aggregate of the taxable payrolls of all employers for the twelve (12) calendar months ending on June 30 next preceding.

(g) "Modified rates" means the rates of employer unemployment insurance contributions determined under the provisions of this chapter and the rates of newly subject employers, as provided in Section 71-5-353.

(h) For the computation of modified rates, "qualifying period" means a period of not less than the thirty-six (36) consecutive calendar months ending on the computation date throughout which an employer's experience-rating record has been chargeable with benefits; except that with respect to any eligible employer who has not been subject to this article for a period of time sufficient to meet the thirty-six (36) consecutive calendar-month requirement, "qualifying period" means the period ending on the computation date throughout which his or her experience-rating record has been chargeable with benefits, but in no event less than the twelve (12) consecutive calendar-month period ending on the computation date throughout which his or her experience-rating record has been so chargeable.

(i) The "exposure criterion" (EC) is defined as the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits as of November 16 of each calendar year or the next working day if November 16 falls on a holiday or a weekend, divided by the total wages, exclusive of wages paid by all state agencies, all political subdivisions, reimbursable nonprofit corporations, and tax-exempt public service employment, for the twelve-month period ending June 30 immediately preceding such date. The EC shall be computed to four (4) decimal places and rounded up if any fraction remains. Notwithstanding any other provision contained herein, the date for determining the cash balance of the Unemployment Compensation Fund which is available for the payment of benefits for the calendar years 2020 and 2021 shall be December 31.

(j) The "cost rate criterion" (CRC) is defined as follows: Beginning with January 1974, the benefits paid for the twelve-month period ending December 1974 are summed and divided by the total wages for the twelve-month period ending on June 30, 1975. Similar ratios are computed by subtracting the earliest month's benefit payments and adding the benefits of the next month in the sequence and dividing each sum of twelve (12) months' benefits by the total wages for the twelve-month period ending on the June 30 which is nearest to the final month of the period used to compute the numerator. If December is the final month of the period used to compute the numerator, then the twelve-month period ending the following June 30 will be used for the denominator. Benefits and total wages used in the computation of the cost rate criterion shall exclude all benefits and total wages applicable to state agencies, political subdivisions, reimbursable nonprofit corporations, and tax-exempt PSE employment.

The CRC shall be computed as the average for the highest monthly value of the cost rate criterion computations during each of the economic

cycles since the calendar year 1974 as defined by the National Bureau of Economic Research. The CRC shall be computed to four (4) decimal places and any remainder shall be rounded up.

The CRC shall be adjusted only through annual computations and additions of future economic cycles.

(k) "Size of fund index" (SOFI) is defined as the ratio of the exposure criterion (EC) to the cost rate criterion (CRC). The target size of fund index will be fixed at 1.0. If the insured unemployment rate (IUR) exceeds a four and five-tenths percent (4.5%) average for the most recent completed July to June period, the target SOFI will be.8 and will remain at that level until the computed SOFI (the average exposure criterion of the current year and the preceding year divided by the average cost rate criterion) equals 1.0 or the average IUR falls to four and five-tenths percent (4.5%) or less for any period July to June. However, if the IUR falls below two and five-tenths percent (2.5%) for any period July to June the target SOFI shall be 1.2 until such time as the computed SOFI is equal to or greater than 1.0 or the IUR is equal to or greater than two and five-tenths percent (2.5%), at which point the target SOFI shall return to 1.0.

(*l*) No employer's unemployment contribution general experience rate plus individual unemployment experience rate shall exceed five and four-tenths percent (5.4%). Accrual rules shall apply for purposes of computing contribution rates including associated functions.

(m) The term "general experience rate" has the same meaning as the minimum tax rate.

(2) Modified rates:

(a) For any tax year, when the reserve ratio on the preceding November 16, in the case of any tax year, equals or exceeds three percent (3%), the modified rates, as hereinafter prescribed, shall be in effect. In computation of this reserve ratio, any remainder shall be rounded down.

(b) Modified rates shall be determined for the tax year for each eligible employer on the basis of his or her experience-rating record in the following manner:

(i) The department shall maintain an experience-rating record for each employer. Nothing in this chapter shall be construed to grant any employer or individuals performing services for him or her any prior claim or rights to the amounts paid by the employer into the fund.

(ii) Benefits paid to an eligible individual shall be charged against the experience-rating record of his or her base period employers in the proportion to which the wages paid by each base period employer bears to the total wages paid to the individual by all the base period employers, provided that benefits shall not be charged to an employer's experience-rating record if the department finds that the individual:

1. Voluntarily left the employ of such employer without good cause attributable to the employer or to accept other work;

2. Was discharged by such employer for misconduct connected with his or her work;

3. Refused an offer of suitable work by such employer without good cause, and the department further finds that such benefits are based on wages for employment for such employer prior to such voluntary leaving, discharge or refusal of suitable work, as the case may be;

4. Had base period wages which included wages for previously uncovered services as defined in Section 71-5-511(e) to the extent that the Unemployment Compensation Fund is reimbursed for such benefits pursuant to Section 121 of Public Law 94-566;

5. Extended benefits paid under the provisions of Section 71-5-541 which are not reimbursable from federal funds shall be charged to the experience-rating record of base period employers;

6. Is still working for such employer on a regular part-time basis under the same employment conditions as hired. Provided, however, that benefits shall be charged against an employer if an eligible individual is paid benefits who is still working for such employer on a part-time "as-needed" basis;

7. Was hired to replace a United States serviceman or servicewoman called into active duty and was laid off upon the return to work by that serviceman or servicewoman, unless such employer is a state agency or other political subdivision or instrumentality of the state;

8. Was paid benefits during any week while in training with the approval of the department, under the provisions of Section 71-5-513B, or for any week while in training approved under Section 236(a)(1) of the Trade Act of 1974, under the provisions of Section 71-5-513C;

9. Is not required to serve the one-week waiting period as described in Section 71-5-505(2). In that event, only the benefits paid in lieu of the waiting period week may be noncharged; or

10. Was paid benefits as a result of a fraudulent claim, provided notification was made to the Mississippi Department of Employment Security in writing or by email by the employer, within ten (10) days of the mailing of the notice of claim filed to the employer's last-known address.

(iii) Notwithstanding any other provision contained herein, an employer shall not be noncharged when the department finds that the employer or the employer's agent of record was at fault for failing to respond timely or adequately to the request of the department for information relating to an unemployment claim that was subsequently determined to be improperly paid, unless the employer or the employer's agent of record shows good cause for having failed to respond timely or adequately to the request of the department for information. For purposes of this subparagraph "good cause" means an event that prevents the employer or employer's agent of record from timely responding, and includes a natural disaster, emergency or similar event, or an illness on the part of the employer, the employer's agent of record, or their staff charged with responding to such inquiries when there is no other individual who has the knowledge or ability to respond. Any agency error that

resulted in a delay in, or the failure to deliver notice to, the employer or the employer's agent of record shall also be considered good cause for purposes of this subparagraph.

(iv) The department shall compute a benefit ratio for each eligible employer, which shall be the quotient obtained by dividing the total benefits charged to his or her experience-rating record during the period his or her experience-rating record has been chargeable, but not less than the twelve (12) consecutive calendar-month period nor more than the thirty-six (36) consecutive calendar-month period ending on the computation date, by his or her total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date. Such benefit ratio shall be computed to the tenth of a percent (.1%), rounding any remainder to the next higher tenth.

(v)1. The unemployment insurance contribution rate for each eligible employer shall be the sum of two (2) rates: his or her individual experience rate in the range from zero percent (0%) to five and four-tenths percent (5.4%), plus a general experience rate. In no event shall the resulting unemployment insurance rate be in excess of five and four-tenths percent (5.4%), however, it is the intent of this section to provide the ability for employers to have a tax rate, the general experience rate plus the individual experience rate, of up to five and four-tenths percent (5.4%).

2. The employer's individual experience rate shall be equal to his or her benefit ratio as computed under paragraph (b)(iv) of this subsection (2).

3. The general experience rate shall be determined in the following manner: The department shall determine annually, for the thirty-six (36) consecutive calendar-month period ending on the computation date, the amount of benefits which were not charged to the record of any employer and of benefits which were ineffectively charged to the employer's experience-rating record. For the purposes of this item 3, the term "ineffectively charged benefits" shall include:

a. The total of the amounts of benefits charged to the experience-rating records of all eligible employers which caused their benefit ratios to exceed five and four-tenths percent (5.4%);

b. The total of the amounts of benefits charged to the experience-rating records of all ineligible employers which would cause their benefit ratios to exceed five and four-tenths percent (5.4%) if they were eligible employers; and

c. The total of the amounts of benefits charged or chargeable to the experience-rating record of any employer who has discontinued his or her business or whose coverage has been terminated within such period; provided, that solely for the purposes of determining the amounts of ineffectively charged benefits as herein defined, a "benefit ratio" shall be computed for each ineligible employer, which shall be

the quotient obtained by dividing the total benefits charged to his or her experience-rating record throughout the period ending on the computation date, during which his or her experience-rating record has been chargeable with benefits, by his or her total taxable payroll for the same period on which all unemployment insurance contributions due have been paid on or before the September 30 immediately following the computation date; and provided further, that such benefit ratio shall be computed to the tenth of one percent (.1%) and any remainder shall be rounded to the next higher tenth.

The ratio of the sum of these amounts (subsection (2)(b)(v)3a, b and c) to the taxable wages paid during the same period divided by all eligible employers whose benefit ratio did not exceed five and four-tenths percent (5.4%), computed to the next higher tenth of one percent (.1%), shall be the general experience rate; however, the general experience rate for rate year 2014 shall be two tenths of one percent (.2%) and to that will be added the employer's individual experience rate for the total unemployment insurance rate.

4.a. Except as otherwise provided in this item 4, the general experience rate shall be adjusted by use of the size of fund index factor. This factor may be positive or negative, and shall be determined as follows: From the target SOFI, as defined in subsection (1)(k) of this section, subtract the simple average of the current and preceding years' exposure criterions divided by the cost rate criterion, as defined in subsection (1)(j) of this section. The result is then multiplied by the product of the CRC, as defined in subsection (1)(j) of this section, and total wages for the twelve-month period ending June 30 divided by the taxable wages for the twelve-month period ending June 30. This is the percentage positive or negative added to the general experience rate. The sum of the general experience rate and the trust fund adjustment factor shall be multiplied by fifty percent (50%) and this product shall be computed to one (1) decimal place, and rounded to the next higher tenth.

b. Notwithstanding the minimum rate provisions as set forth in subsection (1)(*l*) of this section, the general experience rate of all employers shall be reduced by seven one-hundredths of one percent (.07%) for calendar year 2013 only.

5. The general experience rate shall be zero percent (0%) unless the general experience ratio for any tax year as computed and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%) is an amount equal to or greater than two-tenths of one percent (.2%), then the general experience rate shall be the computed general experience ratio and adjusted on the basis of the trust fund adjustment factor and reduced by fifty percent (50%); however, in no case shall the sum of the general experience plus the individual experience unemployment insurance rate exceed five and four-tenths percent (5.4%). For rate years subsequent to 2014, Mississippi Workforce Enhancement Train-

ing contribution rate, and/or State Workforce Investment contribution rate, and/or Mississippi Works contribution rate, when in effect, shall be added to the unemployment contribution rate, regardless of whether the addition of this contribution rate causes the total contribution rate for the employer to exceed five and four-tenths percent (5.4%).

6. The department shall include in its annual rate notice to employers a brief explanation of the elements of the general experience rate, and shall include in its regular publications an annual analysis of benefits not charged to the record of any employer, and of the benefit experience of employers by industry group whose benefit ratio exceeds four percent (4%), and of any other factors which may affect the size of the general experience rate.

7. Notwithstanding any other provision contained herein, the general experience rate for calendar year 2021 shall be zero percent (0%). Charges attributed to each employer's individual experience rate for the period March 8, 2020, through June 30, 2020, will not impact the employer's individual experience rate calculations for purposes of calculating the total unemployment insurance rate for 2021 and the two (2) subsequent tax rate years. Moreover, charges attributed to each employer's individual experience rate for the period July 1, 2020, through December 31, 2020, will not impact the employer's individual experience rate calculations for purposes of calculating the total unemployment insurance rate for 2022 and the two (2) subsequent tax rate years.

(vi) When any employing unit in any manner succeeds to or acquires the organization, trade, business or substantially all the assets thereof of an employer, excepting any assets retained by such employer incident to the liquidation of his or her obligations, whether or not such acquiring employing unit was an employer within the meaning of Section 71-5-11, subsection H, prior to such acquisition, and continues such organization, trade or business, the experience-rating and payroll records of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of rate determination.

(vii) When any employing unit succeeds to or acquires a distinct and severable portion of an organization, trade or business, the experience-rating and payroll records of such portion, if separately identifiable, shall be transferred to the successor upon:

1. The mutual consent of the predecessor and the successor;

2. Approval of the department;

3. Continued operation of the transferred portion by the successor after transfer; and

4. The execution and the filing with the department by the predecessor employer of a waiver relinquishing all rights to have the experience-rating and payroll records of the transferred portion used for the purpose of determining modified rates of contribution for such predecessor.

(viii) If the successor was an employer subject to this chapter prior to the date of acquisition, it shall continue to pay unemployment insurance

contributions at the rate applicable to it from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date of acquisition, it shall pay unemployment insurance contributions at the rate applicable to the predecessor or, if more than one (1) predecessor and the same rate is applicable to both, the rate applicable to the predecessor or predecessors, from the date the acquisition occurred until the end of the then current tax year. If the successor was not an employer prior to the date the acquisition occurred and simultaneously acquires the businesses of two (2) or more employers to whom different rates of unemployment insurance contributions are applicable, it shall pay unemployment insurance contributions from the date of the acquisition until the end of the current tax year at a rate computed on the basis of the combined experience-rating and payroll records of the predecessors as of the computation date for such tax year. In all cases the rate of unemployment insurance contributions applicable to such successor for each succeeding tax year shall be computed on the basis of the combined experience-rating and payroll records of the successor and the predecessor or predecessors.

(ix) The department shall notify each employer quarterly of the benefits paid and charged to his or her experience-rating record; and such notification, in the absence of an application for redetermination filed within thirty (30) days after the date of such notice, shall be final, conclusive and binding upon the employer for all purposes. A redetermination, made after notice and opportunity for a fair hearing, by a hearing officer designated by the department who shall consider and decide these and related applications and protests; and the finding of fact in connection therewith may be introduced into any subsequent administrative or judicial proceedings involving the determination of the rate of unemployment insurance contributions of any employer for any tax year, and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact in proceedings to redetermine the contribution rate of an employer.

(x) The department shall notify each employer of his or her rate of contribution as determined for any tax year as soon as reasonably possible after September 1 of the preceding year. Such determination shall be final, conclusive and binding upon such employer unless, within thirty (30) days after the date of such notice to his or her last-known address, the employer files with the department an application for review and redetermination of his or her contribution rate, setting forth his or her reasons therefor. If the department grants such review, the employer shall be promptly notified thereof and shall be afforded an opportunity for a fair hearing by a hearing officer designated by the department who shall consider and decide these and related applications and protests; but no employer shall be allowed, in any proceeding involving his or her rate of unemployment insurance contributions or contribution liability, to contest the chargeability to his or her account of any benefits paid in accordance with a determination,

redetermination or decision pursuant to Sections 71-5-515 through 71-5-533 except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him or her, and then only in the event that he or she was not a party to such determination, redetermination, decision or to any other proceedings provided in this chapter in which the character of such services was determined. The employer shall be promptly notified of the denial of this application or of the redetermination, both of which shall become final unless, within ten (10) days after the date of notice thereof, there shall be an appeal to the department itself. Any such appeal shall be on the record before said designated hearing officer, and the decision of said department shall become final unless, within thirty (30) days after the date of notice thereof to the employer's last-known address, there shall be an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, in accordance with the provisions of law with respect to review of civil causes by certiorari.

(3) Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a)(i) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two (2) employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective on January 1 of the year following the year the transfer occurred.

(ii) If, following a transfer of experience under subparagraph (i) of this paragraph (a), the department determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability of unemployment insurance contributions, then the experience-rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer or an employing unit under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the department finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions. Instead, such person shall be assigned the new employer rate under Section 71-5-353, unless assignment of the new employer rate results in an increase of less than two percent (2%), in which case such person would be assigned the new employer rate plus an additional two percent (2%) penalty for the rate year. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of unemployment insurance contributions, the department shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or

whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(i) If a person knowingly violates or attempts to violate paragraph (a) or (b) of this subsection or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

1. If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three (3) rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than two percent (2%) for such year, then the person's tax rate shall be increased by two percent (2%) for such year. The penalty rate will apply to the successor business as well as the related entity from which the employees were transferred in an effort to obtain a lower rate of unemployment insurance contributions.

2. If the person is not an employer, such person shall be subject to a civil money penalty of not more than Five Thousand Dollars ($5,000.00). Each such transaction for which advice was given and each occurrence or reoccurrence after notification being given by the department shall be a separate offense and punishable by a separate penalty. Any such fine shall be deposited in the penalty and interest account established under Section 71-5-114.

(ii) For purposes of this paragraph (c), the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(iii) For purposes of this paragraph (c), the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(iv) In addition to the penalty imposed by subparagraph (i) of this paragraph (c), any violation of this subsection may be punishable by a fine of not more than Ten Thousand Dollars ($10,000.00) or by imprisonment for not more than five (5) years, or by both such fine and imprisonment. This subsection shall prohibit prosecution under any other criminal statute of this state.

(d) The department shall establish procedures to identify the transfer or acquisition of a business for purposes of this subsection.

(e) For purposes of this subsection:

(i) "Person" has the meaning given such term by Section 7701(a)(1) of the Internal Revenue Code of 1986; and

(ii) "Employing unit" has the meaning as set forth in Section 71-5-11.

(f) This subsection shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

HISTORY: Codes, 1942, § 7392; Laws, 1940, ch. 295, § 5; Laws, 1948, ch. 412, § 4c; Laws, 1950, ch. 454, § 1c; Laws, 1952, ch. 383, § 2c; Laws, 1956, ch. 404, § 2c; Laws, 1958, ch. 533, § 5c; Laws, 1962, ch. 564, § 2c; Laws, 1964, ch. 442, § 2c; Laws, 1971, ch. 519, § 8; Laws, 1977, ch. 497, § 3; Laws, 1979, ch. 465, § 2; Laws, 1980, ch. 350; Laws, 1981, ch. 447, § 1; Laws, 1982, ch. 349, § 1; Laws, 1984, ch. 301, § 2; Laws, 1985, ch. 442; Laws, 1986, ch. 319, § 1; Laws, 1987, ch. 394; Laws, 1988, ch. 322, § 1; Laws, 1991, ch. 511, § 1; Laws, 1992, ch. 463, § 1; Laws, 1993, ch. 307, § 1; Laws, 1994, ch. 303, § 2; reenacted, Laws, 1995, ch. 507, § 2; Laws, 1998, ch. 331, § 4; Laws, 1999, ch. 306, § 2; Laws, 2000, ch. 412, § 2; Laws, 2005, ch. 400, § 1; Laws, 2005, ch. 437, § 2; Laws, 2007, ch. 606, § 8; Laws, 2010, ch. 302, § 2; Laws, 2010, ch. 504, § 3; Laws, 2012, ch. 515, § 60; Laws, 2013, ch. 309, § 7; Laws, 2014, ch. 350, § 1; Laws, 2014, ch. 504, § 2; Laws, 2016, ch. 302, § 2, eff from and after passage (approved Mar. 21, 2016); Laws, 2020, ch. 445, § 1, eff from and after July 1, 2020; Laws, 2021, ch. 360, § 5, eff from and after July 1, 2021; Laws, 2022, ch. 51, § 9, eff from and after passage (approved April 18, 2022); Laws, 2022, ch. 489, § 2, eff from and after July 1, 2022.

Joint Legislative Committee Note — Section 9 of Chapter 51, Laws of 2022, effective from and after passage (approved April 18, 2022) amended this section. Section 2 of Chapter 489, Laws of 2022, effective from and after July 1, 2022 (approved April 20, 2022) also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 489, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Amendment Notes — The first 2022 amendment (ch. 51), in (1)(i), added the last sentence.

The second 2022 amendment (ch. 489), in (1)(i), added the last sentence.

ARTICLE 11.

BENEFITS.

Sec.

71-5-547. Prevention and detection of fraud regarding payment of unemployment insurance benefits and collection of tax contributions; recovery of fraudulently obtained benefits and improperly withheld unemployment insurance tax contributions [Effective January 1, 2023].

§ 71-5-511. Eligibility conditions [Repealed effective July 1, 2023].

JUDICIAL DECISIONS

2. "Available for work."

Circuit court's decision upholding the denial of unemployment compensation was supported by substantial evidence where the pro se claimant admitted to the ALJ that he had not met the work-search requirements. Mitchell v. Miss. Dep't of Empl. Sec., 340 So. 3d 374, 2022 Miss. App. LEXIS 188 (Miss. Ct. App. 2022).

§ 71-5-517. Initial determination [Repealed effective July 1, 2023].

JUDICIAL DECISIONS

2. Late notice of appeal.

3. —Failure to show good cause.

Where appellant was discharged by his employer for "misconduct and the Mississippi Department of Employment Security denied his claim, his appeal was properly dismissed as untimely under Miss. Code Ann. § 71-5-517 as he did not show "good cause" for failing to appeal within the statutory time limit. Because appellant acknowledged that he received the notice of the denial of his claim but left the job center without filing his notice of appeal and then waited approximately thirty-eight days before filing the appeal, there was substantial evidence to support the ALJ's decision to dismiss his appeal. Grace v. Miss. Dep't of Empl. Sec., 328 So. 3d 1267, 2021 Miss. App. LEXIS 421 (Miss. Ct. App. 2021).

§ 71-5-547. Prevention and detection of fraud regarding payment of unemployment insurance benefits and collection of tax contributions; recovery of fraudulently obtained benefits and improperly withheld unemployment insurance tax contributions [Effective January 1, 2023].

This section describes the minimum requirements that the Mississippi Department of Employment Security must meet related to its activities concerning fraud prevention, detection and recovery.

(1) The Mississippi Department of Employment Security ("department") shall focus upon the prevention and detection of fraud with respect to the payment of unemployment insurance benefits and the collection of tax contributions. In furtherance of these goals, the department shall take the following steps to enhance its recovery efforts:

(a) The executive director of the department shall adopt and implement internal administrative policies, business processes and regulations as necessary to:

(i) Pursue recovery of improper overpayments of unemployment benefits to the extent permitted by state and federal law;

(ii) Require all employers to promptly notify the department within ten (10) business days of an individual's refusal of an offer of suitable work;

(iii) Authorize the department to use all available technological resources, including the Integrity Data Hub and the National Directory of New Hires, or any other sources, to verify newly hired and re-hired employees reported under state and federal law, in a manner which shall facilitate the reduction of fraudulent unemployment insurance applications;

(iv) Authorize the department to use any available technological resources to verify by cross-match, or any other current method, any and

all claims associated with potentially fraudulent applications or overpayments reported under state and federal law;

(v) Create a regulation governing the frequency that new hire and incarceration verification is checked; and

(vi) Authorize the department to require employers to promptly respond to all cross-match wage requests.

(2) To further the department's efforts in the area of fraud prevention, detection, and recovery of fraudulently obtained unemployment insurance benefits:

(a) The department shall be authorized to take all enforcement and administrative steps appropriate to ensure claimants who refuse offers of suitable work do not receive undue unemployment benefits and are referred to the appropriate office for internal investigation;

(b) All state agencies, political subdivisions, including, but not limited to, any and all state law enforcement entities, shall promptly respond to all requests for information from the department for the prevention and detection of fraud and the recovery of fraudulently paid benefits or improperly withheld unemployment insurance tax contributions. No state political subdivision may impede or delay any fraud prevention, detection or recovery efforts of the department; and

(c) All state agencies, departments, divisions, boards and other political subdivisions shall be required to share data for the prevention and detection of fraud and the recovery of fraudulent paid benefits or improperly withheld unemployment insurance tax contributions with the department to enable the detection and prevention of unemployment insurance fraud. The department shall have the authority to execute a memorandum of understanding with any state agency, department, division, board or other political subdivision for information required to be shared between agencies for the purposes outlined in this section.

(3) The department shall be authorized to promulgate any and all necessary rules and regulations, at the discretion of the executive director or his or her designee, to implement the provisions of this section in keeping with its mission of fraud prevention, detection, and recovery, in accordance with Section 71-5-117.

HISTORY: Laws, 2022, ch. 354, § 1, eff from and after January 1, 2023.

CHAPTER 17.

MISSISSIPPI EQUAL PAY FOR EQUAL WORK ACT

Sec.

71-17-1. Short title.
71-17-3. Definitions.
71-17-5. Unequal pay to member of the opposite sex for equal work requiring equal skill, education, effort and responsibility performed under similar working conditions prohibited; exceptions; enforcement by civil suit; remedies; retaliation against employee prohibited.

Sec.
71-17-7. Timing of civil action; relief may be sought under this chapter or Equal Pay Act of 1963 but not both; mandatory authority of published precedents; severability.

§ 71-17-1. Short title.

The provisions of this chapter shall be known and may be cited as the "Mississippi Equal Pay for Equal Work Act".

HISTORY: Laws, 2022, ch. 490, § 1, eff from and after July 1, 2022.

§ 71-17-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Employee" means any individual who is employed to work forty (40) or more hours a week and who is employed by an employer, including individuals employed by the state or any of its political subdivisions or instrumentalities of subdivisions.

(b) "Employer" means any person who employs five (5) or more employees.

(c) "Wage" means and includes all compensation paid by an employer or his or her agent for the performance of service by an employee, including the cash value of all compensation paid in any medium other than cash.

(d) "Rate" with reference to wages means the basis of compensation for services by an employee for an employer and includes compensation based on time spent in the performance of such services, on the number of operations accomplished, or on the quality produced or handled.

(e) "Unpaid wages" means the difference between the wages actually paid to an employee and the wages required to be paid to an employee as provided in this chapter.

(f) "Skill" means and shall be measured by factors such as experience, ability, education and training that are required to perform a job.

(g) "Effort" means the amount of physical or mental exertion needed to perform a job.

(h) "Responsibility" means the degree of accountability required to perform the job.

(i) "Working Conditions" means and includes the following two (2) factors:

(i) The physical surroundings of a job including, but not limited to, temperature, fumes and ventilation; and

(ii) The hazards of the job.

HISTORY: Laws, 2022, ch. 490, § 2, eff from and after July 1, 2022.

§ 71-17-5. Unequal pay to member of the opposite sex for equal work requiring equal skill, education, effort and responsibility performed under similar working conditions prohibited; exceptions; enforcement by civil suit; remedies; retaliation against employee prohibited.

(1) No employer may pay an employee a wage at a rate less than the rate at which an employee of the opposite sex in the same establishment is paid for equal work on a job, the performance of which requires equal skill, education, effort and responsibility, and which is performed under similar working conditions, except where payment is made pursuant to differential based on:

(a) A seniority system;

(b) A merit system;

(c) A system which measures earnings by quantity or quality of production; or

(d) Any other factor other than sex. "Any other factor other than sex" shall include, but not be limited to, the following factors:

(i) The salary history or continuity of employment history demonstrated by the employee as compared to employees of the opposite sex in the same establishment;

(ii) The extent to which there was competition with other employers for the employee's services as compared to employees of the opposite sex in the same establishment; and

(iii) The extent to which the employee attempted to negotiate for higher wages as compared to employees of the opposite sex in the same establishment.

(2)(a) The provisions of this chapter may be enforced by private action in a civil suit in the circuit court in the county in Mississippi where the cause of action occurred pursuant to the Mississippi Rules of Civil Procedure.

(b) If an employer is found to have violated the provisions of subsection (1) of this section, the employee shall be awarded reasonable attorney's fees, prejudgment interest, back pay and costs of the action.

(3) An employer who is paying a wage differential in violation of this chapter shall not, in order to comply with this chapter, reduce the wage rate of any employee.

(4) No employer may discharge, discriminate or in any way retaliate against any employee by reason of any action taken by the employee to invoke or assist in any manner the enforcement of this chapter.

HISTORY: Laws, 2022, ch. 490, § 3, eff from and after July 1, 2022.

§ 71-17-7. Timing of civil action; relief may be sought under this chapter or Equal Pay Act of 1963 but not both; mandatory authority of published precedents; severability.

(1) A civil action brought under this chapter may be commenced no later

than two (2) years from the day the employee knew or should have known his or her employer was in violation of this chapter.

(2) If an employee brings a claim under the Equal Pay Act of 1963, a separate action may not be maintained under this chapter. If an employee brings a claim under this chapter, then later initiates a claim under the Equal Pay Act of 1963, the action brought under this chapter shall be dismissed with prejudice. An employee who seeks relief under this chapter must first waive any right to relief under the Equal Pay Act of 1963.

(3)(a) For any action under this chapter, published precedents of the United States Supreme Court, the United States Court of Appeals for the Fifth Circuit and federal district courts embracing the circuit court in which any action under this chapter is pending, deciding cases under the Equal Pay Act of 1963, after which this chapter is patterned, shall be considered mandatory authority and shall be followed by the circuit court in which the action is pending, until there is a contrary ruling interpreting this chapter by the Mississippi Supreme Court or the Mississippi Court of Appeals.

(b) If any section, paragraph, sentence, clause, phrase or any part of this chapter passed is declared to be unconstitutional or void, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

HISTORY: Laws, 2022, ch. 490, § 4, eff from and after July 1, 2022.

Federal Aspects — Equal Pay Act of 1963, see 29 USCS § 206.